117-634

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 162.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, APPELLANT,

vs.

JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. REED, JOSEPH S. REED, ARIANNA E. SCAMMON, MARTIN ANDREWS, CAROLINE ANDREWS, MARK KIMBALL, ASSIGNEE; CHARLES COMSTOCK, FIRST NATIONAL BANK OF MACOMB, ILLINOIS, HIRAM WILSON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 6, 1882.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of the United States circuit court for the seventh circuit; the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois; and Hon. Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, on Monday, the second day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

WM. H. BRADLEY, *Clerk.*

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, Florence A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews, Mark Kimball, Assignee; Charles Comstock, First National Bank of Macomb, Illinois, Hiram
2 Wilson, The Ridgley National Bank, Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball, The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank of Chicago, Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews, The United States Mortgage Company, William H. Stevens, Henry Bromley, William D. Dillard, The Manufactur-s' National Bank of Racine, Alexander M. Byers, William McCullough, Ebenezer M. Byers, George Scoville, and Albinus B. Wood.

No. 13741.
In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-third day of June, A. D. 1876, came the complainant, by its solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its bond for costs and bill of complaint in said entitled cause, which said bond and bill are respectively in the words and figures following, to wit:

3 *Bond for Costs.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

Circuit Court. —— Term, A. D. 1876. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, FLORENCE A. D. REED, *et al.*

I enter myself security for costs in this cause and promise to pay

all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, I hereby agree and stipulate that execution may issue against my property for any costs taxed against it.

Dated this 23d day of June, A. D. 1876.

ROBERT T. LINCOLN.

(Endorsed:) Filed June 23d, A. D. 1876. Wm. H. Bradley, clerk.

4 *Bill of Complaint.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To the judges of the circuit court of the United States for the northern district of Illinois:

The Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, and which is a citizen of the State of Connecticut, brings this its bill of complaint against Jonathan Young Scammon and Maria S. Scammon, his wife; Florence A. D. Reed and Joseph S. Reed, her husband; Arianna E. Scammon; Martin Andrews and Caroline Andrews, his wife; Mark Kimball, assignee of the Mutual Security Insurance Company of Chicago, bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a corporation created and existing under the laws of the United States; Hiram Wilson; The Ridgley National Bank, a corporation created by and existing under the laws of the United States; Charles Chandler, William H.
5 Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a corporation created by and existing under the laws of the State of Illinois; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a corporation created by and existing under the laws of the United States; Thomas C. Boyd, and James J. Bufton, who are each and all citizens of the State of Illinois and residents in said State; and also against Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, his wife, who are each and all citizens of and residents in the State of Ohio; and against The United States Mortgage Company, a corporation created by and existing under the laws of the State of New York, which is a citizen of and resident in the State of New York; and against William H. Stevens and (Albinus B. Wood made party defendant by amendment by leave of court August 25, 1876) Albinus B. Wood, who are citizens of and resident in the State of Michigan; and against Henry A. Bromley, who is a citizen of and resident in the State of Minnesota; and against William D. Dillard, who is a citizen of and resident in the State of Kentucky; and against The Manufacturers' National Bank of Racine, Wisconsin, a corporation
6 created by and existing under the laws of the United States, is a citizen of and resident in the State of Wisconsin; and

against Alexander M. Byers, William McCullough, and Ebenezer M. Byers, who are each and all citizens of and residents in the State of Pennsylvania.

And thereupon your orator complains and says that the said Jonathan Young Scammon, Florence A. D. Reed (by the name of Florence A. D. Scammon, she being then unmarried), and Arianna E. Scammon, three of the defendants hereinbefore named, on or about the tenth day of September, in the year of our Lord one thousand eight hundred and sixty-six, applied to and requested your orator to lend them the sum of thirty thousand dollars on the security hereinafter named, and that your orator complied with such request, and did accordingly, at Chicago aforesaid, lend and advance the said sum of thirty thousand dollars to the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon upon the bond hereinafter set forth, which was expressly declared to be made under and in all respects to be construed by the laws of the State of Illinois.

7 And that thereupon, and in order to secure the repayment thereof to your orator, with interest thereon at the rate of eight per centum per annum, payable half yearly, the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon duly executed and delivered to your orator their certain bond or obligation in writing, sealed with their seals, and bearing date at Chicago the said tenth day of September, in the year of our Lord one thousand eight hundred and sixty-six, in the penal sum of sixty thousand dollars, conditioned in effect for the payment unto your orator, its successors or assigns, of the principal sum of thirty thousand dollars, on the tenth day of September, in the year of our Lord one thousand eight hundred and seventy-one, with interest for the same, to be computed from the day of the date thereof, at and after the rate of eight per centum per annum, which said interest should be paid half yearly, to wit, on the tenth day of each of the months of March and September

8 which would be in each and every year, until said principal sum should be fully paid, which said interest payments, until the said principal sum should become due, were specified in and further secured by ten coupons given therewith, and to which said bond there was a proviso added whereby in effect it was expressly agreed and fully understood that if default should be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly as aforesaid, and any portion thereof should remain due and unpaid for the space of thirty days after the same should become due and payable according to the above condition, then and in that case the principal sum above mentioned, together with all arrearages of interest thereon, should, at the option of your orator, its successors or assigns, thereupon become due and payable, and should become collectible without notice immediately, or at any time after any such default, anything thereinbefore contained to the contrary notwithstanding, as by the said bond, now in possession of your orator, and ready to be produced and proved

9 as your honors shall direct, reference being thereto had, may more fully and at large appear.

And your orator further shows unto your honors that for the purpose of further securing the repayment to your orator of said sum of money so loaned as aforesaid, with the interest thereon as aforesaid; the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon also at the same time executed and delivered to your orator their certain indenture of mortgage, under their hands and seals, bearing date the said tenth day of September, in the year of our Lord one thousand eight hundred and sixty-six, and made, or expressed to be made, between the said Jonathan Young Scammon (by the name of J. Young Scammon), Florence A. D. Reed (by the name of Florence A. D. Scammon), and Arianna E. Scammom, as parties of the first part, and your orator as party of the second part, and that thereby, after reciting as therein mentioned, it was witnessed that for the better securing the payment of the said sum of money mentioned
10 in the condition of said bond, with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by your orator, the receipt whereof was thereby acknowledged, they, the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon, did grant, bargain, sell, alien, release, convey, and confirm unto your orator, its successors and assigns, all that certain lot, piece, or parcel of land situate, lying, and being in the city of Chicago, in the county of Cook, and State of Illinois, known and described as being lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the
11 said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the said granted, bargained, and described premises, with the appurtenances, unto your orator, its successors and assigns, forever, but subject to the proviso therein contained, and said indenture of mortgage was upon the express condition, nevertheless, that if the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon, their heirs, executors, administrators, or assigns, should and did well and truly pay, or cause to be paid, unto your orator, its successors or assigns, the said principal sum of money mentioned in the condition of said bond, and the interest thereon at the time and times respectively, and in the manner mentioned in the condition of said bond, according to the true intent and meaning thereof, and should and did promptly and faithfully fulfill and perform all the covenants and agreements thereinafter mentioned, that then and from thenceforth the said indenture of mortgage and the estate thereby granted should cease, determine, and be utterly null and void, anything thereinbefore contained to the contrary notwithstanding; all of

which will more fully and at large appear by reference to said
12 indenture of mortgage now in the possession of your orator, ready to be produced and proved as your honors shall direct, and to which for greater certainty your orator prays leave to refer.

And your orator further shows unto your honors that the execution and delivery of said indenture of mortgage was afterwards, to wit, on the first day of October, A. D. 1866, duly acknowledged according to law by the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon.

And your orator further shows unto your honors that afterwards, to wit, on the second day of October, A. D. 1866, said indenture of mortgage was filed for record in the office of the recorder within and for the county of Cook, in the State of Illinois, and was duly recorded therein in book 94 of mortgages on page 18 *et seq.*, as by the record of said mortgage now remaining in said office, and also by the certificate of William L. Church, endorsed upon said indenture of mortgage signed by said Wm. L. Church, sufficiently
13 appears, and to which said record and certificate thereof your orator prays leave to refer, if it be necessary for your orator so to do.

And your orator further shows unto your honors that in and by said mortgage it was covenanted and agreed that the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon would well and truly pay or cause to be paid unto your orator, its successors or assigns, the said principal sum of money mentioned in the condition of said bond and the interest thereon according to the said condition.

And your orator further shows that after the execution and delivery of said bond and mortgage, and on or about the tenth day of November, A. D. 1876, the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon paid or caused to be paid to your orator the sum of ten thousand dollars ($10,000.00), as and for a reduction of the principal sum due your orator under said bond and mortgage; and that your orator did thereupon at their request, on or about said last-mentioned day, by deed bearing said date, release and dis-
14 charge from the lien of said mortgage the south one-third of said lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, leaving subject to said mortgage the north two-thirds of said lot, and leaving unpaid on said bond and mortgage the principal sum of twenty thousand dollars ($20,000.00).

And your orator further shows that your orator's said deed of release was on the 18th day of November, A. D. 1867, filed for record in the recorder's office of the said county of Cook, and was duly recorded therein in book 110 of mortgages at page 166.

And your orator shows that there has been paid to your orator the said sum of ten thousand dollars ($10,000.00) on account of the principal sum mentioned in said bond and mortgage, and also all the interest which accrued, due on the said indebtedness up to the

tenth day of September, A. D. 1873, and that no other payments have been made to your orator.

And your orator shows that the balance of the principal indebtedness secured by said bond and mortgage has long since become due and now remains due and unpaid to your orator, and
15 that there is now due to your orator on account of the said principal indebtedness the sum of twenty thousand dollars, with interest at the rate of eight per centum per annum from the tenth day of September, A. D. 1873, in addition to large sums due your orator for money paid by it to redeem said premises from sales for taxes, as hereinafter stated.

And your orator further shows unto your honors that in and by said mortgage it was covenanted and agreed that the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon would not at any time thereafter, until the said principal sum and the interest thereon should be fully paid, suffer said premises or any part thereof to be sold for any tax or assessment whatsoever, nor do or permit to be done anything that should tend to impair the value thereof or to weaken, diminish, or impair the security intended to be effected under and by virtue of said mortgage; and it was further provided that in the event that your orator, its successors or assigns, should expend any money either to save said premises or any part thereof from any sale
16 for taxes or assessments, or to redeem the same from any such sale, or to protect the title or possession thereof, then all such money so expended should be and become a new and additional principal sum of money secured by said mortgage, and should be due and payable and might be collected immediately or at any time thereafter, with interest thereon at the rate of ten per centum per annum from the time of so paying the same.

And your orator further shows unto your honors that after the making of the said mortgage and the covenants aforesaid by the said Jonathan Young Scammon, Florence A. D. Reed (then Florence A. D. Scammon), and Arianna E. Scammon large sums of money became due and payable for taxes and assessments which had been levied and assessed upon said premises remaining subject to the lien of said mortgage according to law, and for the payment of which, upon default made by said Jonathan Young Scammon, Florence A. D. Reed, and Arianna E. Scammon, said premises became and were liable to be sold and were sold, and your orator saith that said defendant made such default in the payment thereof.

17 And your orator further shows that on account of said default in the payment of said taxes and assessments it became necessary that your orator (or some one on its behalf) should and it did necessarily pay, lay out, and expend a large sum of money to protect said premises remaining subject to the lien of said mortgage from sale and to redeem the same for and on account of such taxes and assessments so levied and assessed as aforesaid.

And your orator further shows that no proceedings at law have been had or taken to recover the debt secured by said bond and

mortgage or of any part thereof or any of the interest due on the same.

And your orator further shows unto your honors that it has caused application frequently and in a friendly manner to be made to the said Jonathan Young Scammon, Florence A. D. Reed, and Arianna E. Scammon, and has requested them to pay the said principal sum of money and interest and the amount of taxes and assessments so paid as aforesaid to your orator, or else to release
18 their equity of redemption in and to the said premises, subject to the lien of said mortgage, and your orator well hoped that such its reasonable request would have been complied with, as in justice it ought to have been; but now, so it is, the said last-named defendants refuse so to do, and the other of the defendants hereinbefore named have, or claim to have, some interest in the said premises now subject to the lien of said mortgage, or some part thereof, either as subsequent purchasers, incumbrancers, judgment creditors, or otherwise, and to be entitled to redeem the same, but they and also the said other defendants refuse so to do.

And your orator charges that the interest in the said mortgaged premises which the said defendants (other than the said Jonathan Young Scammon, Florence A. D. Reed, and Arianna E. Scammon) have, if any they or either of them have in said premises or any part thereof, has accrued subsequent to the lien of the said mortgage to your orator, and is subordinate thereto, and that the said defendants ought either to pay what is due to your orator as
19 aforesaid under the several covenants of the said bond and the said mortgage or to release their equity of redemption in said mortgaged premises, but they refuse so to do.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may full, true, and perfect answers make (not under oath, answers under oath being hereby waived, according to the statute in such case made and provided) to all and singular the premises as fully and particularly as if the same were hereinafter repeated.

Your orator prays that an account may be taken under the direction of this court of what is due and owing to your orator for principal money and interest on its said bond and mortgage, and of all moneys due your orator under any of the covenants therein contained, and that said defendants may be decreed to pay to your orator what may be found due to it on taking such account as aforesaid, together with the costs of this suit, by a short day to be appointed by this honorable court for that purpose, or in default thereof that said premises now subject to the lien of said mortgage
20 may be sold by and under the direction of this court according to the rules and practice of this court, and the proceeds of such sale may be applied to the payment of the amount due your orator as aforesaid, together with all costs and expenses, and that the said Jonathan Young Scammon, Florence A. D. Reed, and Arianna E. Scammon and the other defendants, and all persons claiming under them subsequent to the commencement of this suit may be foreclosed and barred from all equity of redemption or claim

of, in, and to the said premises now subject to the lien of said mortgage, namely, the north two-thirds of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, and that your orator may have such further and other relief in the premises as to your honors shall seem meet and the nature of this case may require.

May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said Jonathan Young Scammon, Maria S. Scammon,
Florence A. D. Reed, Joseph S. Reed, Arianna E. Scammon,
21 Martin Andrews, Caroline Andrews; Mark Kimball, assignee of the Mutual Security Insurance Company, bankrupt; Charles Comstock, The First National Bank of Macomb, Illinois, Hiram Wilson, The Ridgley National Bank, Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank of Chicago, Illinois, Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, William H. Stevens (Albinus B. Wood made party by amendment by leave of court August 25, 1876), Albinus B. Wood, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, Alexander M. Byers, William McCullough, and Ebenezer M. Byers, thereby commanding them, and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet. And your orator will ever pray, &c.

THE CONNECTICUT MUTUAL LIFE
INSURANCE COMPANY,
22 By ISHAM & LINCOLN, *Its Solicitors.*

EDW. S. ISHAM, *Of Counsel.*

(Endorsed:) Filed June 23, 1876. Wm. H. Bradley, cl'k.

On the same day, to wit, on the twenty-third day of June, A. D. 1876, there issued out of said clerk's office a writ of subpœna in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

The United States of America to Jonathan Young Scammon, Maria S. Scammon, Florence A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, assignee, &c.; Charles Comstock, The First National Bank of Macomb, Hiram Wilson, The Ridgley National Bank, Charles Chandler, William H.

Harper, Charles Birkenshaw, Farlin Q. Ball, The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank of Chicago, Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews, The United States Mortgage Company, William H. Stevens, Henry Bromley, William D. Dillard, The Manufacturers' National Bank of Racine, Alexander M. Byers, William McCullough, Ebenezer M. Byers, Greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of August next, to answer the bill of complaint of The Connecticut Mutual Life Insurance Company, this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 23d day of June, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the 100th.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago aforesaid on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon Jonathan T. Scammon and Maria S. Scammon, therein named, on the 18th day of July, A. D. 1876; also upon Florence A. D. Reed and Joseph S. Reed, therein named, on the 18th day of July, A. D. 1876; also upon Martin Andrews and Caroline Andrews, therein named, on the 18th day of July, A. D. 1876; also upon William H. Harper, therein named, on the 18th day of July, A. D. 1876; also upon Frank B. Orr, therein named, on the 18th day of July, A. D. 1876; also upon Oswald Lockett, therein named, on the 18th day of July, A. D. 1876; also upon Thomas C. Boyd, therein named, on the 18th day of July, A. D. 1876; upon James J. Bufton, therein named, on the 24th day of July, A. D. 1876, by personally delivering to each of them a true copy of the same on the aforesaid days. I also served the same upon the following-named defendants, not having been able to find

them to serve personally, by leaving a true copy for each of them at their usual places of abode with an adult person and a member of their respective families, to wit: Upon Arianna E. Scammon on the 18th day of July, A. D. 1876, with Florence A. D. Reed; also upon Crane Brothers Manufacturing Company on the 11 day of July, A. D. 1876, with J. W. Skinkle, treasurer; also upon Benjamin E. Gallup on the 11 day of July, A. D. 1876, with Mrs. Gallup; also upon Francis B. Peabody on the 28 day of July, A. D. 1876, with Mary Morrison; also upon Charles Birkenshaw on the 18th day of July, A. D. 1876, with Mrs. Birkenshaw; also upon Charles Comstock on the 4th day of August, A. D. 1876, with Alex. Hallstrom. I did not serve the Mechanics' National Bank, the other defendant, having been unable to find it, or that it had any residence
26 within my district; nor the other defendants, by order of the complainant's solicitors.

B. H. CAMPBELL,
U. S. Marshal.
By A. C. CAMPBELL, *Deputy.*

(Endorsed:) Filed Aug. 11, A. D. 1876. W. H. Bradley, clerk.

Afterwards, to wit, on the twenty-fifth day of August, in the July term of said court, A. D. 1876, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON *et al.*

On motion, leave is given complainant to amend the bill of complaint herein by making Albinus B. Wood party defendant herein.

27 Afterwards, to wit, on the eighteenth day of September, in the July term of said court, A. D. 1876, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON *et al.*

On motion, leave is given complainant to make George Scoville a party defendant.

Afterwards, to wit, on the twenty-second day of September, A. D.

1876, there issued out of said clerk's office an *alias* writ of subpœna in said entitled cause; which said *alias* writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Alias Subpœna.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

28 The United States of America to the United States Mortgage Company, impleaded with Jonathan Young Scammon *et al.*, Greeting:

We command you and every of you, as we have before commanded you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of November next, to answer the bill of complaint of the Connecticut Mutual Life Insurance Company, heretofore filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-second day of September, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the 101st.

29 [SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon the United States Mortgage Company therein named on the 27th day of September, A. D. 1876, by personally delivering to Alfred W. Sansome, its secretary, a true copy of the same on the aforesaid day.

B. H. CAMPBELL,
U. S. Marshal,
By A. C. CAMPBELL, *Deputy.*

(Endorsed:) Filed Oct. 2nd, A. D. 1876. Wm. H. Bradley, clerk.

30 Afterwards, to wit, on the second day of October, A. D. 1876, came George Scoville *et al.*, by their solicitors, and filed in

said clerk's office their appearances in said entitled cause, which said appearances are in the words and figures following, to wit:

31 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harder, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter my appearance as one of the defendants in the above-entitled cause.

GEO. SCOVILLE.

32 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martha Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National

Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter the appearance of The Manufacturers' National Bank of Racine, one of the defendants in the above-entitled cause.

HUNTINGTON W. JACKSON, *Att'y.*

33 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs.

JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter the appearance of William H. Stevens and Albinus B. Wood, two of the defendants in the above-entitled cause.

FREDERICK ULLMANN,
Their Sol'r.

34 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs.

JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews,

Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

We hereby enter the appearance of The Ridgley National Bank, one of the defendants in the above-entitled cause.

HITCHCOCK & DUPEE, *Att'ys.*

35 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswall Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter my appearance as one of the defendants in the above-entitled cause.

FRANCIS B. PEABODY.

36 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

We hereby enter the appearance of The Mechanics' National Bank of Chicago, one of the defendants in the above-entitled cause.
Chicago, Aug. 23, '76.

McCAGG, CULVER & BULLER,
Sol'rs, &c.

37 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National

Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter the appearance of Charles Chandler and The First National Bank of Macomb, Illinois, two of the defendants in the above-entitled cause.

JNO. C. PATTERSON,
Their Att'y.

38 *Appearance.*

UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter the appearance of Hiram Wilson, — the defendants in the above-entitled cause.

H. CRAWFORD,
His Att'y.

39 *Appearance.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter the appearance of William D. Dillard, one of the defendants in the above-entitled cause.

GWYNN GARNETT,
Sol'r of Def't, Dillard.

(Endorsed:) Filed Oct. 2d, 1876. Wm. H. Bradley, cl'k.

40 And afterwards, to wit, on the fourth day of November, A. D. 1876, came Florence A. D. Reed and Arianna E. Scammon, two of the defendants, by their solicitors, and filed in said clerk's office their appearances in said entitled cause, which said appearances are in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. Bill in Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
J. YOUNG SCAMMON, FLORENCE A. D. REED, ARIANNA E. SCAMMON, *et al.*

We hereby enter the appearance of the defendants, Florence A.

D. Reed and Arianna E. Scammon, in the above-entitled cause.

WHITE AND FLETCHER,
Solicitors for said Florence A. D. Reed and Arianna E. Scammon.

(Endorsed:) Filed Nov. 4, 1876. Wm. H. Bradley, cl'k.

41 On the same day, to wit, on the fourth day of November, A. D. 1876, came F. A. D. Reed and A. E. Scammon, two of the defendants, by their solicitors, and filed in said clerk's office their answer to the bill of complaint in said entitled cause; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741. Term No. 972.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, &c.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, &c.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, &c.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews,
42 Emma Andrews; The United States Mortgage Company, a Corporation, &c.; William H. Stephens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, &c.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, Albinus B. Wood and George Scoville.

The joint and several answers of Florence A. D. Reed and Arianna E. Scammon, two of the defendants, to the bill of complaint of The Connecticut Mutual Life Insurance Company filed herein against them and others, defendants.

These defendants, answering, admit the execution and delivery of the bond and mortgage specified in said bill of complaint to the complainant at the time therein specified, and that the same was duly recorded as alleged in said bill.

These defendants, further answering, admit that the sum of thirty thousand dollars was at the time therein specified lent and advanced to said J. Young Scammon, their father, but show to the court that no part of said money was paid to them, or either of them. That said described and mortgaged premises, to wit, said lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chi-

cago, Cook county, State of Illinois, was the separate & individual property of their mother, Mary Ann H. D. Scammon, during her lifetime, and the title to said premises was vested in these defendants and their brother, Charles T. Scammon, at her death, as her heirs-at-law, subject to the life estate of their father, J. Young Scammon. That the title to said Charles T. Scammon's interest in said premises afterwards became vested in said J. Young Scam-
43 mon. That at the time of the execution of said bond and mortgage these defendants, Florence A. D. Reed and Arianna E. Scammon, were each the owner of an undivided one-third part of said premises in fee, subject to the life estate of their father, J. Young Scammon, therein, and that said ownership in these defendants and the extent of their title was well known to the complainant. That to enable said J. Young Scammon, their father, to improve said premises and to borrow money for said purpose they joined with him in the execution of said bond and mortgage to the complainant. That the money so advanced by said complainant was, as these defendants believe, & so state, thereupon used by said J. Young Scammon in improving said premises, and a valuable building was erected thereon.

These defendants, further answering, say that afterwards, and on or about the 10th day of Sept., A. D. 1867, a partition of said premises was made between these defendants and their father, and a written instrument ordered of partition was executed by & between them, bearing date on said 10th day of September, A. D. 1867, which said instrument was afterwards and on the 2nd day of December, A. D. 1867, duly recorded in the recorder's office of Cook county, in the State of Illinois, in book 425, at page 46. That by the terms and conditions of said deed of partition the south one-third of said lot number five, in block number eleven, in Fort Dearborn Addition to Chicago, was set off to said J. Young Scammon as the one-third part of said lot in which he had an estate or fee, and said south one-third of said lot was, at his re-
quest, conveyed to the Marine Company of Chicago,
44 and the other two-thirds, that is to say, the north two-thirds of said lot, were thereby set off and conveyed in fee to these defendants, their heirs and assigns, forever, to be held by them and considered the estate of these defendants in fee, subject, however, to the life estate of their father, J. Young Scammon, therein; all of which will more fully and at large appear by reference to said deed now in the possession of these defendants, and ready to be produced and proved, as this honorable court shall direct, a copy of which deed is hereto annexed, marked Exhibit "A," and made a part of this answer. These defendants further say that said premises so set off to them, to wit, said north two-thirds of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, Cook county, and State of Illinois, has not since been conveyed by them, and is now the joint property of these defendants, Florence A. D. Reed & Arianna E. Scammon, in fee simple, subject to the life estate of their father, said J. Young Scammon, therein. These defendants, further answering, admit that afterwards, on or about the tenth

day of November, A. D. 1867, that ten thousand dollars was paid in reduction of said principal sum of thirty thousand dollars, and that the complainant thereupon released and discharged from the lien of said mortgage the south one-third of said lot. These defendants admit that there has been paid to complainant the said sum of ten thousand dollars on account of the principal sum mentioned in said bond and mortgage, and also all the interest which accrued due on said indebtedness up to the tenth day of September, A. D. 1873;

but these defendants do not admit that no other payments
45 have been made to the complainant, as alleged on said bill, or that there is now due to the complainant on account of said principal indebtedness the sum of twenty thousand dollars, with interest at eight per cent. per annum from the tenth day of September, A. D. 1873, in addition to large sums paid by complainant, as alleged, to redeem said premises *for* sales for taxes. But these defendants show that it was at the time of the execution of said mortgage agreed, and in and by said mortgage expressly covenanted by J. Young Scammon, that he would at all times thereafter, until said principal sum and all interest thereon should be fully paid, keep all the buildings then situate or that should thereafter be erected upon said premises fully insured against loss or damage by fire, and should assign and deliver to the complainant such policies of insurance as soon as and whenever such insurance should be effected, and that the complainant should hold each and all of such policies of insurance as collateral and additional security for said principal sum of money & interest, and should have the right to collect & receive any and all moneys & sums of money that should become collectible or receivable upon such policies of insurance, and should apply the same when received upon the indebtedness secured to be paid by said mortgage. These defendants, further answering, say that said loan was effected primarily for the benefit of the life estate of their father, said J. Young Scammon, and for the purpose of enabling him to derive an income therefrom, and that said insurance clause in said mortgage was for their benefit

as well as for the benefit of the complainant. These defend-
46 ants, further answering, say that after the execution of said mortgage to the complainant and the making of said improvements on said premises, and up to the time of the great fire in Chicago, in the month of October, 1871, said J. Young Scammon, as was his right, collected all the rents of said premises, and out of the proceeds thereof paid the taxes and assessments thereon and kept said buildings insured for the benefit of said mortgage indebtedness; that at the time of said fire, to wit, on the 9th day of October, A. D. 1871, said building situate on the north two-thirds of said lot five, and known as No. 90 Michigan avenue, was entirely consumed by fire; that said building was at said date insured for the sum of fifteen thousand dollars, as these defendants were informed, in the Liverpool and London and Globe Insurance Company, and said policy or policies of insurance were then held by the complainant as collateral security for the payment of said mortgage indebtedness, and the loss under said policy was payable to said complain-

ant, which said insurance had been procured by said J. Young Scammon under the provisions and in conformity to the terms of said mortgage, and paid for out of the rents of said premises.

These defendants, further answering, show, upon information and belief, that thereafter and on or about the fifth day of January, A. D. 1872, said complainant collected, or caused to be collected, from said Liverpool and London and Globe Insurance Company, under said policy or policies of insurance on said premises, the sum of fifteen thousand dollars, which said amount these defendants shall and will insist should have been applied in payment of the said mortgage indebtedness then remaining on said premises
47 and in liquidation thereof. But these defendants show that said complainant, without the knowledge, authority, or consent of these defendants in that behalf, then, to wit, on or about the 5th day of January, A. D. 1872, made and entered into an agreement with their father, J. Young Scammon, who was then a person of large reputed wealth and unlimited credit, in effect that said insurance money so collected, or to be collected, should not be applied on said mortgage indebtedness as provided in said mortgage, but should be deposited in such bank as should be selected by said J. Young Scammon and assented to by the complainant, and be used in the erection of new buildings and improvements on said premises. And it was also further provided in effect in said agreement that said insurance money should be expended on said premises with all reasonable dispatch, and that in the event that said moneys should not have been so expended within six months from the date of said agreement, then said agreement should be null and void, and said complainant should have the right to draw said money from said bank on its own check and apply the same in payment of said mortgage indebtedness; all of which will more fully and at large appear by reference to a copy of said agreement, which is hereto annexed, marked Exhibit "B," and made a part of these defendants' answer.

These defendants, further answering, say that they are informed that the Marine Company of Chicago was selected by said J. Young Scammon as the banking office in which to deposit said insurance money and assented to by the complain-t; that said moneys
48 were actually deposited with said The Marine Company of Chicago. But these defendants show that said moneys were not used, or any part thereof, in the erection of new buildings or improvements on said premises within six months or at any time; that these defendants believe that said agreement was entered into in good faith by said J. Young Scammon and the complainant, and that said moneys were actually used by said J. Young Scammon with the assent of the complainant in making valuable improvements on other property in which the complainant was then interested as mortgagee, and of which it has since become the purchaser under foreclosure. These defendants are informed and believe that it was owing to the great cost of building material after the great fire that said moneys were needed in completing said other improvements, and were diverted from their designated use in making improvements on said described premises. But these defendants show

that they and each of them were total strangers to said agreement, and were not consulted in relation thereto, and never directly or indirectly gave their assent thereto. And that the complainant, in consenting to the use of said insurance moneys in any other way than in payment of said mortgage indebtedness, relied upon the credit of said J. Young Scammon and released the property of these defendants to said extent. That the rights of these defendants should not be prejudiced by any subsequent misfortunes which have come upon said J. Young Scammon and impaired his credit, on which the complainant so relied.

49 These defendants, further answering, say that the whole of said money so lent and advanced by the complainants on the security of said mortgage- premises was in reality lent and advanced to said J. Young Scammon, and for the benefit of his said life estate therein, and that these defendants did and could receive no benefit therefrom during the continuance of said life estate. And these defendants shall and will insist that said life estate should be first sold and the proceeds thereof applied first in payment and liquidation of the remaining five thousand dollars and the interest thereon now remaining unpaid on said mortgage indebtedness, and that these defendants and their said described property should thereupon be released from all further liability growing out of said bond and mortgage. All which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct.

FLORENCE A. D. REED,
ARIANNA E. SCAMMON,
Defendants.

WHITE & FLETCHER,
Solicitors & of Counsel.

50 EXHIBIT "A."

(Copy.)

This memorandum witnesseth: That J. Young Scammon, being the owner in fee of an undivided one-third of lot five (5), in block eleven (11), in Fort Dearborn Addition to Chicago, and Florence A. D. Scammon and Arianna E. Scammon, being each the owner of an undivided one-third of said lot, subject to the life estate of their father, as the husband of their mother, it has been agreed that the south one-third of said lot shall be, and is hereby, set off to said J. Young Scammon as the one-third part of said lot in which he has an estate in fee, and said south one-third of said lot has been, at his request, conveyed to the Marine Company of Chicago, and the other two-thirds—that is to say, the north two-thirds, being that part of said lot which is occupied by store number ninety (90) on Michigan avenue, at present occupied by G. C. Cook & Co.—are hereby set off and conveyed to said Florence A. D. and Arianna E., their heirs and assigns, forever, to be held and considered the estate of said Florence A. D. and Arianna E. in fee, subject, however, to the life estate of said J. Young Scammon therein (which said life estate is

not to be disturbed by this agreement), so that at the death of said J. Young Scammon said Florence A. D. and Arianna E. shall own the north two-thirds of said lot, exclusive of the heirs and all other persons claiming title under said J. Young Scammon.

In witness whereof the said parties hereto have hereunto set their hands and seals, this tenth day of September, in the year of our Lord one thousand eight hundred and sixty-seven.

[Int'l Revenue Stamp, 5 cts.]

(Signed) J. YOUNG SCAMMON. [SEAL.]
51 FLORENCE A. D. SCAMMON. [SEAL.]
ARIANNA E. SCAMMON. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

I, Eugene C. Long, a notary public in and for the city of Chicago, in said county of Cook and State of Illinois, do hereby certify that J. Young Scammon and Florence A. D. Scammon, who are personally known to me to be the real persons whose names are subscribed to the foregoing agreement, appeared before me this day in person, and acknowledged that they had signed, sealed, and delivered the said instrument of writing as their free act and deed for the uses and purposes therein expressed.

Given under my hand and notarial seal, this thirty-first day of October, in the year of our Lord one thousand eight hundred and sixty-seven.

[Int'l Rev. Stamp, 5 cts.]

[Notarial seal.] (Signed) EUGENE C. LONG,
Notary Public.

52 STATE OF NEW YORK, } ss:
City and County of New York, }

I, William H. Riblet, a notary public in and for said city of New York, in the county and State aforesaid, do hereby certify that Arianna E. Scammon, who is personally known to me to be the real person whose name is subscribed to the within deed of agreement as having executed the same, appeared before me this day in person, and acknowledged that she signed, sealed, and delivered the said instrument of writing as her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal, this twentieth day of November, A. D. 1867.

[Notarial seal.] (Signed) WM. H. RIBLET,
Notary Public.

STATE OF ILLINOIS, *Cook County:*

Recorded Dec'b'r 2d, 1867, in book 425 of deeds, page 46.
(Signed) WM. L. CHURCH, *Clerk.*

53 EXHIBIT "B."

(Copy.)

Memorandum of agreement made and entered into this fifth day of January, A. D. 1872, between the Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, of the one part, and J. Young Scammon, of the city of Chicago, in the county of Cook, and State of Illinois, of the other part, witnesseth: That whereas the said part- of the second part did, on the tenth day of September, A. D. 1866, make, execute, and deliver to the said party of the first part a certain indenture of mortgage, bearing date on that day, on the following-described premises, situate and being in the city of Chicago aforesaid, to wit, lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, for the purpose of securing the payment of the certain bond or obligation of the said party of the second part, bearing even date with said mortgage, in the penal sum of sixty thousand dollars, conditioned for the payment to said party of the first part of the sum of thirty thousand ($30,000) dollars on the tenth day of September, A. D. 1871, with interest as therein stated, on which said mortgage has been paid ten thousand dollars of principal; and whereas the building on said premises known as No. 90 Michigan avenue, in said city of Chicago, *were* insured in the following companies and in the following amounts, to wit, the Liverpool and London and Globe, in the sum of

54 fifteen thousand dollars, which said policies of insurance w- held by said party of the first part as collateral security for the payment of said loan, any loss on said policies to be paid to said party of the first part; and whereas said building has been destroyed by fire and the insurance moneys to be received on said policy or policies are subject to be paid to said party of the first part, in accordance with the conditions of said mortgage; and whereas said part- of the second part desires said party of the first part to permit and suffer said insurance money to be used in and upon said mortgage premises in the reconstruction of said building or buildings thereon, and said first party is willing to have said insurance money so used, upon the terms and conditions hereinafter set forth, and to assist in the collection and receipt thereof by said second party from said fire insurance company or companies for the purposes aforesaid: It is, therefore, mutually agreed by and between the parties hereto that said party of the first part waives, except as hereinafter provided, its right to apply on the said indebtedness the moneys that may be received on said policy or policies of insurance, and that any and all such sum or sums of money as shall be so collected from said fire insurance company or companies by either of the parties to this instrument shall be deposited in such bank or banks as shall be selected by the party of the second part and assented to by the said first party, to the credit and at the risk of said part- of the second part, to be used in the erection of said building or buildings on said mortgaged premises.

That said money shall be paid out and expended in the erection of said building or buildings from time to time on the drafts or checks of said party of the second part, countersigned by the said party of the first part, or its duly authorized agent or attorney, until said insurance money is fully expended as herein provided on said mortgaged premises. That said drafts or checks shall be so countersigned upon the presentation thereof to said party of the first part, its duly authorized agent or attorney, together with a certificate of a competent and credible architect, that the amount of said check or draft, together with all previous checks or drafts drawn or paid out on said account has been actually expended in and upon said mortgaged premises in the permanent improvements thereon, and that the work and material for which the amounts so expended have been paid are fully worth such sum.

If, however, said buildings are being constructed without the supervision of an architect, the affidavit of said part- of the second part to said facts may at the option of said first party be received in lieu of said architect's certificate. And it is further understood and agreed that so soon as said building or buildings shall be in a situation to be insured said party of the second part shall cause the same to be insured in some good and responsible insurance company, in the fair insurable value thereof, and assign and deliver the same to said party of the second part, and as soon as said building shall become so insurable all the provisions contained in said above-described mortgage shall apply to said insurance, and said conditions are hereby made a part of this agreement. It is also expressly understood that any receipt or acknowledgment given by said party of the first part, either alone or jointly with others, to any such insurance company or companies for the purposes aforesaid of facilitating the collection by said second party of any insurance money intended to be placed back on said mortgaged premises as aforesaid, shall not be construed as a collection of said money by said first party under the conditions of said mortgage, wherein and whereby it is provided that said first party may collect and apply such insurance money upon the indebtedness secured to be paid thereby, but merely as enabling said second party to collect said insurance moneys. Said moneys are not to be so applied, and said mortgage shall remain a lien on said mortgaged premises for the full amount of the principal money mentioned in the said bond, with the interest thereon, as if said monies had never been collected.

It is also further expressly understood and agreed that said insurance money shall be expended on said mortgaged premises as above provided, with all reasonable and proper dispatch; and that in the event that from any cause, whether the death or absence of any party of parties to this agreement or any other cause, said money shall not have been so expended within six months from the date hereof, then this agreement of waiver shall thereupon become thenceforth null and of no effect, and the right of said second party to use and expend said moneys shall thereupon cease, and said first party shall have the right to draw from the said bank or banks, upon its own check or checks, or that of its authorized

agent, said insurance moneys, or so much thereof as shall not then have been actually expended as provided in this agreement, and apply the same in payment *pro tanto* of the indebtedness secured by said mortgage, and such check or checks of said first party or its agent as aforesaid drawn at any time after the expiration of six months from the date hereof shall be a full discharge and acquittance to said bank or banks for any moneys paid thereon.

It is expressly agreed that time shall be of the essence of this agreement in all its parts, and that said agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

(Signed) J. YOUNG SCAMMON. [SEAL.]

I hereby designate the Marine Company of Chicago as the banking office in which to deposit said insurance money.

(Signed) J. YOUNG SCAMMON.

Endorsed: Filed Nov. 4, 1876. Wm. H. Bradley, cl'k.

58 Afterwards, to wit, on the sixth day of November, A. D. 1876, came the complainant, by its solicitors, and filed in said clerk's office its replication to the joint and several answer of F. A. D. Reed and A. E. Scammon in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National
59 Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine,

Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood, George Scoville.

The replication of The Connecticut Mutual Life Insurance Company, complainant, to the joint and several answer of Florence A. D. Reed and Arianna E. Scammon.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that it does and will aver, maintain, and prove said bill to be true, certain,
60 and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainant.

(Endorsed:) Filed Nov. 6, 1876. Wm. H. Bradley, cl'k.

On the same day, to wit, on the sixth day of November, A. D. 1876, came A. M. Byers, Wm. McCullough, and E. M. Byers, three of the defendants, by their solicitors, and filed in said clerk's office their appearances in said entitled cause, which said appearances are in the words and figures following, to wit:

61 *Appearances.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Term No. 972.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. REED, JOSEPH S. REED, *et al.*

We hereby enter the appearance of Alexander M. Byers, William McCullough, and Ebenezer M. Byers, three of the defendants in the above-entitled cause.

BAKER & OSGOOD,
Sol'rs for said Alexander M. Byers, William McCullough, Ebenezer M. Byers.

(Endorsed:) Filed Nov. 6, 1876. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the fourth day of December, A. D. 1876, came Farlin Q. Ball, one of the defendants, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

62 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company, of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corpo-
63 ration, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter my appearance as one of the defendants in the above-entitled cause.

FARLIN Q. BALL.

(Endorsed:) Filed Dec. 4, 1876. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the twenty-eighth day of December, A. D. 1876, came Mark Kimball, assignee, and H. A. Bromley, two of the defendants, by their solicitors, and filed in said clerk's office their appearances in said entitled cause, which said appearances are in the words and figures following, to wit:

Appearance of Kimball.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
64 *vs.*
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martha Andrews,

Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood.

We hereby enter the appearance of Mark Kimball, as-
65 signee in bankruptcy of the Mutual Security Insurance Company of Chicago, a bankrupt, one of the defendants in the above-entitled cause.

WILLIAMS & THOMPSON,
Sol'rs Mark Kimball, Ass'g.

(Endorsed:) Filed Dec. 28, 1876. Wm. H. Bradley, cl'k.

Appearance of Henry A. Bromley.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. REED Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois,
66 a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

We hereby enter the appearance of Henry A. Bromley, one of the defendants in the above-entitled cause.

GRANT & SWIFT,
Sol'rs for Bromley.

(Endorsed:) Filed Dec. 28, 1876. Wm. H. Bradley, cl'k.

67 Afterwards, to wit, on the fourth day of January, A. D. 1877, there was filed in said clerk's office the affidavit of Robert T. Lincoln in said entitled cause, which said affidavit is in the words and figures following, to wit:

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the United States Circuit Court, Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper,
68 Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood, George Scoville.

Robert T. Lincoln, being duly sworn, on oath says: That he is one of the solicitors of the complainant in the above-entitled cause; that said cause is a suit brought by the complainant to enforce the lien of the mortgage described in the bill of complaint in said cause upon the lands mentioned in said bill of complaint. He further says Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, being defendants in the above-entitled cause, are not either of them
69 inhabitants of, and cannot either of them be found within, said northern district of Illinois, and that neither of them has voluntarily or otherwise appeared in said cause.

And he further says that he has himself made, and has also caused to be made, diligent enquiry to ascertain the places of residence of each of the said last above-named defendants; that he is informed and believes that the said defendants, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, reside in the city of Columbus, in the State of Ohio.

Deponent further says that the premises described in the bill of complaint in this cause are vacant and unoccupied, and are not in possession or charge of any person, to the knowledge of deponent.

ROBERT T. LINCOLN.

Subscribed and sworn to before me, this fourth day of January, A. D. 1877.

[SEAL.] WILLIAM L. GLASS,
Notary Public.

(Endorsed:) Filed Jan'y 4, 1877. Wm. H. Bradley, cl'k.

On the same day, to wit, on the fourth day of January, A. D. 1877, in the December term of said court, A. D. 1876, in the record of the proceedings thereof in said entitled cause, before Hon. Henry
70 W. Blodgett, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corpora-
71 tion, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, Albinus B. Wood, George Scoville.

On reading the affidavit of Robert T. Lincoln, on file in this cause, it appearing to the court that neither of the said defendants, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, is an inhabitant of the northern district of Illinois, and that neither of them can be found within said district, and that neither of them has voluntarily or otherwise appeared in this cause, it is ordered that said defendants, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, appear, plead, answer, or demur to the complainant's bill of complaint in this cause on or before the twenty-sixth day of February, A. D. 1877, and that a copy of this order be served on each of them on or before the first day of February, A. D. 1877.

Afterwards, to wit, on the third day of February, A. D. 1877, came Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, by their solicitor, and filed in
72 said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741. Term No. 736.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee in Bankruptcy of the Mutual Security Insurance Company of Chicago, a Bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a Corporation, etc.; Hiram Wilson; The Ridgley National Bank, a Corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a Corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' Na-
73 tional Bank of Chicago, Illinois, a Corporation, etc.; Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews; The United States Mortgage Company, a Corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a Corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville.

I hereby enter the appearance of Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, five of the defendants in the above-entitled cause.

JOHN P. WILSON,
Solicitor for Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews.

(Endorsed:) Filed Feb'y 3, 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the second day of March, A. D. 1877, in the December term of said court, A. D. 1876, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

74 In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs.

JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, *et al.*

Now comes the complainant, by Messrs. Isham and Lincoln, its solicitors, and it appearing to the court that the defendants, Jonathan Young Scammon, Maria S. Scammon, Joseph S. Reed; Mark Kimball, assignee in bankruptcy of the Mutual Security Insurance Company of Chicago, a bankrupt; Charles Comstock; The First National Bank of Macomb, Illinois, a corporation; etc.; Hiram Wilson; The Ridgley National Bank, a corporation, etc.; Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball; The Crane Brothers Manufacturing Company, a corporation, etc.; Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett; The Mechanics' National Bank of Chicago, Illinois, a corporation, etc.; Thomas C. Boyd, James J. Bufton; The United States Mortgage Company, a corporation, etc.; William H. Stevens, Henry A. Bromley, William D. Dillard; The Manufacturers' National Bank of Racine, Wisconsin, a corporation, etc.; Alexander M. Byers, William McCullough, Ebenezer M. Byers, and Albinus B. Wood and George Scoville,

75 had been duly served with process, or had appeared herein, and had failed to answer the complainant's bill of complaint, in conformity with the rules and practice of this court, and they being now each three times solemnly called come not, but make default: It is thereupon ordered by the court that their defaults be entered, and that the complainant's bill of complaint and the matters and things therein contained be taken as confessed and true as against them.

Afterwards, to wit, on the eleventh day of April, A. D. 1877, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the Northern District of the State of Illinois.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
J. YOUNG SCAMMON, MARTIN ANDREWS, *et al.* } Bill.

It is hereby stipulated that the answer filed in said cause

76 by Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews may be withdrawn from the files, and that said Andrews may have twenty days' time within which to file an answer in said cause.

Chicago, April 10th, '77.

ISHAM & LINCOLN,
Compl't's Sol'rs.

(Endorsed:) Filed April 11, 1877. Wm. H. Bradley, cl'k.

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On the same day, to wit, on the eleventh day of April, in the adjourned March term of said court, A. D. 1877, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON *et al.*

On motion, and as per stipulation filed, leave is given the defendants, Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, to withdraw their answer
77 herein, and thereupon leave is given them to file a new answer herein within twenty days.

Afterwards, to wit, on the thirtieth day of April, A. D. 1877, came Martin Andrews *et al.*, by their solicitor, and filed in said clerk's office their joint and several answer to the bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

The joint & several answer of Martin Andrews, Caroline Andrews, his wife; Phœbe D. Andrews, Abner L. Andrews, & Emma Andrews, his wife, five of the defendants, to the bill of complaint of The Connecticut Mutual Life Insurance Company, complainant.

These defendants, saving & reserving, &c., in answer to said bill say that the said company holds its aforesaid mortgage upon said lot five, in block eleven, in Fort Dearborn Addition to Chicago, as an encumbrance thereon, subsequent and subject to the prior
78 lien and charge thereon in favor of the said Martin, Phœbe, and Abner, their heirs & assigns, by reason of a party wall by them erected on and along the north line of said lot five, and in part, that is to say, one-half resting on said lot five, the same having been built by them at their own expense under & pursuant to a party wall agreement therefor in fact made before the making of said mortgage & still existing, & of which said company at all times had full notice; also that the right of the said Martin, Phœbe, & Abner, their heirs & assigns, not only to have said wall continued as a party wall on & along said north line, but also to contribution towards the expense of the execution thereof from the owner, owners, or occupants of said lot five, who shall or may hereafter make use of the same, is prior & precedent to the said mortgage of said com-

pany, & not subsequent nor subject thereto; such contribution to be made to them by payment to them, at the time of such use of the same, of one-half of the then value of the part of said wall as shall be so used, and so on from time to time on the same basis, so that upon using the whole of said wall one-half of its value, on the basis aforesaid, shall have been contributed.

79 And these defendants further say that if it be deemed herein that any rights or interests belonging to them or any of them in said lot five or any part of the same is subsequent & subject to the said mortgage, that in such case the residue of said lot five or of the title thereof should be first sold & disposed of towards the satisfaction of said mortgage, and that the rights & interests of these defendants & each of them in said mortgaged premises should be duly protected upon foreclosure of said mortgage, as the rules of equity & justice require. These defendants traverse all matters in said bill not herein admitted, & pray to be hence dismissed, with their reasonable costs.

MARTIN ANDREWS,
For Self, & Abner, Phœbe, Caroline, & Emma Andrews.

JOHN BORDEN,
Of Counsel.

(Endorsed:) Filed Apr. 30, 1877. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the fifth day of May, A. D. 1877, came the complainant, by its solicitors, and filed in said clerk's office its replication to the joint and several answer of Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews in said entitled cause, which said replication is in the words and figures following, to wit:

80 *Replication.*

UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741. Term No. 736.

The replication of The Connecticut Mutual Life Insurance Company, complainant, to the joint and several answer of Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that it does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained mate-

rial or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided,
81 traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainant.

(Endorsed:) Filed this 5th day of May, 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the eighth day of May, in the adjourned May term of said court, A. D. 1877, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following, entry, to wit:

Order.

In Chancery.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON *et al.*

On motion of complainant's solicitors, it is ordered by the court that this cause be referred to Henry W. Bishop, Esq., the master in chancery of this court, to take proofs herein and report
82 the same to the court, together with the amount due complainant herein.

Afterwards, to wit, on the twenty-third day of March, A. D. 1880, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause, which said report, together with the testimony thereto attached, is in the words and figures following, to wit:

83 *Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN Y. SCAMMON *et al.*
} Gen. No. 13741.

To the honorable the judges of said court:

The above-entitled cause having been referred to me as master in chancery of said court by an order of said court heretofore entered herein, I do hereby report that having notified the parties interested of a hearing before me, on the 31st day of May, A. D. 1877, for the purposes in said order expressed, I was attended on that day by R. T. Lincoln, Esq., of the firm of Isham and Lincoln, of counsel for

said complainant, and by C. F. White, Esq., of counsel for the defendants, F. A. D. Reed and A. E. Scammon.

Said counsel for complainant produced in evidence before me the bill of complaint herein, and the bond, dated the 10th
84 day of September, A. D. 1866, from J. Young Scammon, Florence A. Scammon, and Arianna E. Scammon unto the Connecticut Mutual Life Insurance Company.

Also a mortgage, dated the 10th day of September, A. D. 1866, made between J. Young Scammon, Florence A. D. Scammon, and Arianna E. Scammon, parties of the first part, and the Connecticut Mutual Life Insurance Company, party of the second part, being the bond and mortgage referred to and described in said bill of complaint.

Also an agreement, dated the fifth day of January, A. D. 1872, made between said Connecticut Mutual Life Insurance Company, of the one part, and said J. Young Scammon, of the other part.

Also a party wall agreement, dated the 4th of June, 1866, made between the said J. Young Scammon, party of the first part, and Washington Smith, party of the second part.

Said counsel for complainant also testified herein on behalf of said complainant, and his testimony was duly taken and is herewith annexed and made part hereof.

I was also attended on said 31st day of May, A. D. 1877, by said defendant, J. Young Scammon, who has also testified herein,
85 and again by adjournment on the 12th day of June, 1877, when said defendant again testified herein, as did also Florence A. D. Reed; and again, on the 7th day of February A. D. 1879, I was attended by Anson Sperry, who testified herein on behalf of said complainant, and whose testimony was taken and is made part hereof.

I further report that from an examination of said bill of complaint, bond, mortgage, agreement, and exhibits produced therewith, and from a computation made by me, I find that there is due and owing to the said complainant on said bond, secured by said mortgage, the sum of twenty thousand dollars for the principal, and the sum of $10,453.33 for interest thereon, at eight per cent. from the tenth day of September, A. D. 1873, to the date of this report, making a total of $30,453.33. Also the sum of $449.47 for payments shown to have been made on behalf of said complain-t for redeeming from a sale which had been made of the premises referred to in said bill of complaint and mortgage for unpaid city taxes, and to pay a South Park assessment on said premises, and the sum of $168.52 for interest
86 on said payments for taxes to the date of this report, making a total of $617.99.

The entire amount so found to be due and owing said complainant for principal payment to redeem from tax sale or South Park assessment, and interest on each to the date of this report, being $31,071.32.

I return all the documents used by me in preparing this report and make the same a part hereof.

All which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States.

Dated March 22, 1880.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Complainant, *vs.* J. YOUNG SCAMMON, Defendant. } No. 13741.

87 Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 31st day of May, A. D. 1877. Present: Robert T. Lincoln, Esq., of counsel for the complainant, and Mr. White, of counsel for Florence A. D. Reed and Arianna E. Scammon, and the witness below named.

ROBERT T. LINCOLN, a witness on behalf of the complainant, being first duly sworn, deposes and says as follows:

I am one of the solicitors of the complainant in this case.

I introduce in evidence the bond and the mortgage mentioned in the bill of complaint.

It appears by the endorsement upon the bond that, as stated in the bill of complaint, there was paid $10,000.00 of principal upon it on September 10th, 1867, and that all interest on the bond has been paid up to the 10th day of September, 1873.

I know of no other payment having been made upon this indebtedness.

Papers above referred to offered in evidence, marked Exhibits A and B, respectively.

88 The mortgage provides also that in case of default in the payment of taxes the mortgagee should have the right to pay them, and they should be secured by the mortgage in the manner stated in the bill of complaint and in the mortgage just introduced in evidence, to which I refer for particulars.

In accordance with its provisions of the mortgage I, as solicitor for the complainant, having ascertained that default had been made in the payment of taxes on the 22nd of June, 1876, paid for complainant in this cause and out of its money, to redeem that part of the land which is still included in the mortgage and not released, as stated in the bill of complaint, the sum of $443.52 to redeem it from sale for city taxes, and the sum of $5.95 to redeem it from a South Park assessment, and to pay a South Park assessment.

Cross-examination by Mr. WHITE:

Q. Have you in your possession, as solicitor *from* complainant in this cause, an abstract of title of this property?

A. I have in my possession a partial abstract of title to this property, commencing on the 10th day of September, 1876, and on to
89 date.

This abstract to which I have referred was procured to be made by the complainant in this case, as I recollect, about the time of the commencement of this suit and paid for by it. That is the only abstract I have any knowledge of.

Q. Have you in your possession, as solicitor for complainant, a memorandum of agreement, made on the 5th day of June, 1872, between the complainant and J. Young Scammon with regard to his insurance moneys?

A. I have not; I never saw such an agreement.

Q. Have you made enquiries of the complainant in regard to this agreement?

A. I made enquiry this morning about such an agreement, not referring to it by date, at the office of Judge Skinner, who attends to the affairs of the complainant in this case, for such an agreement, if there was any such, and he sent me back word, I did not see him myself, that he had no such agreement, and that if there was any it was in the possession of the complainant in its home office in Connecticut.

Q. Will you endeavor to procure that agreement and introduce it in evidence to your testimony?

90 A. I will endeavor to produce it for such use as you may see fit to make of it.

Q. Have you any personal knowledge with reference to certain insurance money collected upon the policy of insurance issued by the Liverpool, London & Globe Insurance Company in 1871 or early in 1872?

A. I have. Prior to the fire in October, 1871, I had general charge of real estate belonging to Mr. Scammon, and was at that time entirely familiar with all matters of insurance relating to his property in this city, and, as my recollection is, kept accurate records of the insurance on buildings *on* [and] the property now covered by this mortgage was destroyed by that fire; and while I have now no independent recollection of where the policy of insurance itself was, I know at that time that the building was insured in the Liverpool, London & Globe Insurance [Co.] by policy 1,291,633, and I must have had some knowledge at that time that that policy was destroyed in the fire, for on the 16th day of December, 1871, acting under a letter of attorney from Mr. Scammon, I verified a proof of loss under such a policy, and adjusted the loss, as I recollect, at $15,000.00, being the full sum of the policy.

91 I have now no independent recollection of the terms of the policy, nor have I any independent recollection of the receipt of the money under it, but I think that Mr. J. W. Pike, the adjuster of the company, either gave to me, or gave to Mr. Scammon in my presence, a draft for that sum in payment of the policy; and I have no recollection of the terms of the draft, to whom it was payable, nor of the particulars regarding it.

I hold in my hand the proofs of loss executed by myself under that policy; the transaction occurred now nearly six years ago, and I have no recollection independent of that, except that of the proofs of loss.

Q. The policy of Liverpool, London & Globe Insurance Company, as shown by the proofs Mr. Lincoln read, loss, if any, payable to the Connecticut Mutual Life Insurance Company, was it not?

A. The proofs of loss in your hands so state; I don't know anything about the facts.

Q. If it had not been the fact, you would not have put it in the proofs?

A. I did not write the proofs of loss. I was at that time attending to the collection of a very large amount of insurance; and whether the adjusters themselves made the proofs of loss, and
92 were willing to pay the money upon them when I signed it—— We usually signed it and took the money. I would not be at all particular about the proofs of loss, if by signing I was to receive the full face of the policy.

ROBERT T. LINCOLN.

Subscribed and sworn to before me, this 31st day of May, 1877.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Mr. Borden, on behalf of Martin Andrews and others, offers in evidence the party wall agreement, which is hereto attached, marked Exhibit C.

Testimony taken before Henry W. Bishop, Master in Chancery of said Court, Thursday, the 31st day of May, A. D. 1877.

In the Circuit Court of the United States for the Northern District of Illinois., In Chancery.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Complainant, *vs.* J. YOUNG SCAMMON, Defendants.	13741.

93 Present: Robert T. Lincoln, Esq., of counsel for the complainant; and Mr. White, of counsel for Florence A. D. Reed and Arianna E. Scammon, and the witness below named.

J. YOUNG SCAMMON, a witness on behalf of the defendants, Florence A. D. Reed & Arianna E. Scammon, being first duly affirmed, was examined in chief by Mr. WHITE, and affirms and says as follows:

Q. Mr. Scammon, in whom was the title to this property, at the time of the execution of the mortgage sought to be foreclosed by the complainant?

A. At the time of the execution of the mortgage I had a life estate and my daughter had the fee. At the time the mortgage was made, I think, Charles had conveyed his undivided share of what is sought to be foreclosed to me. Lot 5 belonged to my wife, who is dead, and upon her death, of course the title descended to her heirs, Charles T. Scammon, Florence A. D. Scammon, Arianna E.

Scammon, subject to my life estate. Charles T. Scammon had conveyed his interest in the property to me through mesne conveyances, so that the title of this property at the—— (You see this was mortgaged September, 1866; I cannot fix the dates; it seems that this agreement between them is mixed.) At the time
94 of the execution of this mortgage it would seem that I owned the fee of one-third of lot five and my daughters owned two-thirds of lot five, subject to my life estate.

Q. Was the complainant, at the time of the execution of the mortgage, advised as to the title to this property?

A. Well, my impression is that the agent of the complainant knew how the title to the property was at the time the loan was made.

Q. Did you furnish him an abstract?

A. I think I did, but I cannot tell how that is; I cannot tell; I had so many things to recollect; but if I did not furnish him an abstract I told him how the title was.

Q. This property was afterwards partitioned, was it not, Mr. Scammon, between you and your daughters?

A. Yes, sir.

Q. Is that the deed of partition? (Handing witness paper.)

A. Yes, sir; that is the original deed of partition.

By Mr. WHITE: I will introduce in evidence the original agreement of partition of lot 5, block 11, of the property in question, marked Exhibit A, a copy of which is hereto attached. (Retained by counsel.)

95 Q. At or about the time of this partition, $10,000.00 was paid and endorsed upon this bond, was it not?

A. Yes, sir; the same date; the 10th day of December. It was examined afterwards, but the date of the agreement is the 10th of September.

It is a part of the transaction. By the terms of this agreement the part of the property set off to me, in the partition, was conveyed to the Marine Company and released from this mortgage.

Q. I will ask you now, Mr. Scammon, to whom was the money paid which was obtained upon the original loan for which this mortgage was given?

A. It was paid to me.

Q. Was any part of it paid to your daughters?

A. Well, they had not anything to with it excepting signing the paper. I made the whole transaction; the money was paid to me; I did the building; the only thing they did was to sign the paper.

Q. You collected the rent therefor, I suppose, up to the time of the fire?

A. Yes, sir.

Q. Did you insure this property for the benefit of the mortgage indebtedness?

A. I did.

96 Q. Was there insurance upon this property at the time of the fire in 1871?

A. Yes, sir.

Q. To whom was that insurance money payable, according to the terms of the mortgage?

A. I built the buildings. The policy was in my own name, loss, if any, payable to the Connecticut Mutual Life Insurance Company, the complainant in this case.

Q. As has been testified, there has been collected $15,000.00 upon this insurance, was there not?

A. Yes, sir.

Q. I will ask you if any agreement was entered into between you and the Connecticut Mutual Life Insurance Company as to this money, the insurance money?

By Mr. LINCOLN: Objected to.

A. Yes, sir; there was.

Q. What became of the moneys collected on this policy of insurance?

A. Well, I cannot recollect specifically, but I presume it was deposited with all the money that I received for the insurance in one of the banks here of which I was president, perhaps in the Marine Company, and probably in the account of the Marine Company, J. Y. Scammon; banker, at any rate; wherever it was put it was subsequently drawn by me, I suppose.

97 Whereupon further examination of witnesses in this case was adjourned, 11 o'clock a. m., June 9th, 1877.

SATURDAY, *June 9th*, 1877.

Present as before.

Whereupon further examination of witness was adjourned to 3 o'clock p. m., June 12th, 1877.

TUESDAY, *June 12th*, 1877.

Examination continued pursuant to adjournment.

Present as before.

By Mr. WHITE:

Q. I think you stated in your examination the other day, Mr. Scammon, that you collected the rents of the premises covered by the mortgage in question after the erection of the buildings in 1866 or 1867 thereon. Will you please state about what the annual rents of these premises were?

A. I think it was $4,000.00 a year; $4,000.00 a year it was.

Q. Was that for the portion of the premises set apart to your daughters, and now covered by the mortgage sought to be foreclosed —the north $\frac{2}{3}$ of lot 5?

A. Yes, sir; that was Cook's store, the north two-thirds of lot five.

Q. Was that amount more than sufficient to pay the taxes
98 and assessments and interest and insurance upon the premises?

By Mr. LINCOLN: Objected to as immaterial.

A. It was more than enough to pay those.

Q. I think you stated the other day that you kept these premises

insured for the benefit of this mortgage indebtedness, and it was so insured at the time of the fire in 1871?

A. I think it was.

Q. I will ask you to look at the paper which I now hand you, and state what it is.

Objected to.

A. It is a draft or check upon the Liverpool, London and Globe Insurance Company on New York for $15,000.00 that was paid by that company for the loss sustained on the policy of insurance that I referred to.

Q. Do you know the signature of Jacob L. Green, the secretary of the Connecticut Mutual Life Insurance Company?

A. Yes, sir.

Q. Is that his?

A. Yes, sir; that is the endorsement of Jacob L. Greene, secretary, and my own endorsement on it.

By Mr. WHITE: I now offer the above draft on the Liverpool, London and Globe Insurance Company for $15,000.00, marked
99 Exhibit B, Scammon, copy of which is hereto attached.

Q. Was the money paid on this draft, Mr. Scammon, do you know?

A. Yes, sir; it was paid to our credit in New York.

Q. Will you please look at the paper which I now hand you and state what that is? (Handing witness paper.)

A. That seems to be a paper the written portion of which, with the exception of one line that is interlined by me, — in the handwriting of Mr. Sperry, who was acting for the Connecticut Mutual under Judge Skinner; paper signed by me with memorandum of deposit of this money in the Marine Company. In the upper part the handwriting of Mr. Bogne, this part, "January 5th, 1872, deposited with the Marine Company." The writing, "January 5th, 1872, J. Young Scammon," that is the handwriting of Mr. Bogne. The other is a deposit ticket (E. C. Long, treasurer of the Marine Company, Chicago), deposit ticket written in parenthesis, that is in the handwriting of Mr. Long, who was then treasurer of the Marine Company. This is a paper which I signed at the instance of Mr. Sperry; he furnished it to me.

Q. On the execution of that paper by you, was this draft
100 paid to you by the Connecticut Mutual Life Insurance Company?

A. That would be my recollection.

By Mr. WHITE: I now introduce in evidence the memorandum of agreement, purporting to have been made between the Connecticut Mutual Life Insurance Company and Mr. Scammon.

By Mr. LINCOLN: I object to that paper being called an agreement between the Connecticut Mutual Life Insurance Company and anybody, for the reason that it has no signature or attestation of the Connecticut Mutual Life Insurance Company attached or appearing in any way.

Paper introduced in evidence, and is hereto attached, marked Exhibit C.

Q. I will ask you, Mr. Scammon, if, in conformity to the terms of this agreement, the $15,000.00 which was paid on this draft of the insurance company was deposited in the Marine Company in Chicago?

A. My memorandum states so; I presume it was.

101 Q. I will ask you, Mr. Scammon, whether the money deposited in conformity with this memorandum was used within six months or at any other time in making improvements upon the premises in question?

A. It is difficult to answer that question categorically, because I was making arrangements to rebuild all of my property, and I had great quantities of doors, door-frames, and window-frames, and a great quantity of lumber that could be used in various buildings on hand, and then I expended some money—I don't know how much—in preparing that lot for building, clearing out the lot of rubbish, and hauling it off, and then had a large quantity of lumber and materials on hand, to be used in the various buildings; I did not ever make any contract for building upon that lot, but the door-frames and window-frames; I think some sash and doors; I don't know where they are now; they were down at 29th street, but they were never set apart specifically to this particular matter.

Q. As a matter of fact, was any building ever erected upon these premises after the fire?

A. I think not.

Q. The premises are still vacant and unimproved?

A. Yes; that is so.

102 Q. At the time this memorandum was made you were engaged in business as a banker, were you not, in this city—president of two banks?

A. Yes, sir.

Q. I will ask you whether your daughters were consulted by you with reference to this agreement, or with reference to this insurance money?

Objected to as irrelevant.

A. No; I said nothing to them about it in any way whatever; it didn't occur to me at that time that I had any occasion to consult anybody about it but myself and the insurance company.

Q. Was it or was it not an unusual thing at the time for the Connecticut Mutual Life Insurance Company to deposit moneys with you?

Objected to.

A. No; I think not.

Q. They thought you were perfectly good?

A. They knew I was perfectly good; the Connecticut Mutual considered me perfectly good; I am sorry they considered me so good, and let me have so much money as they did.

Cross-examination by Mr. LINCOLN:

Q. By whom was the policy taken out on which this loss
103 was paid; to whom did it run?

A. I think it ran to me alone; that is my recollection; I built the building.

Q. Who paid the premium for the insurance?

A. I paid the premium; you know they have an account on my books with that lot; that is, I had such an account, and I presume I charged the premium to that lot.

Q. Did the account of that lot have any credit?

A. Yes, sir.

Q. For rents?

A. Yes, sir; there is a credit of $333.00 per month; that was on the ledger that was down-stairs.

Q. This credit for rents was on that ledger?

A. Yes, sir.

Q. Was the charges for this matter of insurance on that ledger?

A. I don't know.

Q. Did any of the credits for rents go on to the ledger in my office?

A. I should think not; at least I have no recollection that they did; I have not looked at that ledger; I don't know when I saw that ledger last.

Q. Is it not true that the payment of the premium for this
104 insurance was paid out of one account—of your account in the bank, and the rents received went into another account of yours in the bank?

A. That might have been so. I don't know what the amount of premium was upon the stores; if it was paid as a matter of premium, why that would be the case.

Q. Do you remember, Mr. Scammon, in adjusting the loss on this policy, what the loss on this policy was adjusted to be?

A. I find it states in the paper—by that it would seem to be $25,280.00.

Q. Do you know the value to any certainty as to what the loss was adjusted to be at the time; it was a transaction of six years ago nearly?

A. I have no recollection of this. I think if that was the amount of the loss, the insurance in reality received was $15,000.00. That is my recollection.

Q. Were the names of either of your daughters, Mrs. Reed or Miss Scammon, mentioned in that policy of insurance?

A. No, sir; they had nothing to do with it; I treated that property as entirely my own, considering that my daughters had merely a reversionary interest in it, and I recollect that when I applied for a loan at first it was only second thought that it was neces-
105 sary for my daughters to sign the papers. I always treated it as my own; the insurance was in my own name. I built the buildings on it, and collected the rents, and paid all the taxes, as though it was mine.

Q. Will you please examine this paper, Mr. Scammon, and state if it is in your own handwriting? (Handing witness paper.)

A. Yes, sir; it is in my handwriting.

Q. About when was that written?

A. Well, that must have been written, I should say, the latter part of December. This must have been written either the last of December, 1871, or first of January, 1872. That is my handwriting.

By Mr. LINCOLN: I offer this paper in evidence, marked Exhibit D, Scammon.

By Mr. WHITE: I object to any letters being introduced, unless the answer is put in.

Q. Did you receive any answer to that letter, Mr. Scammon?

A. I don't recollect of having received any answer to it, but I presume I did. I don't recollect writing that letter.

Q. Was it not after that letter that the enclosed draft was sent to you, and in accordance with that letter.

106 A. I think it was, through Mr. Sperry.

Q. That is to say, that it was returned by the Connecticut Mutual Life Insurance Company, through Major Sperry?

A. Yes, sir.

Q. Major Sperry turned it over to you?

A. There is no doubt but that the Connecticut Mutual gave me that money, expecting me to expend it in rebuilding on that property as stated.

Q. Did you make a commencement to build on that property?

A. No, sir; only as I stated. It was cleared off and it was prepared for building purposes, and I employed Messrs. Chambers and McBean, as masons and contractors for mason work, to do all my building on a certain percentage, and they bought lumber and stone and bricks, and I established works down to 29th street, where my planing mill was, for the carpenters' work, and I employed hundreds of men in rebuilding generally.

Q. But no work was done in rebuilding on these premises?

A. Except in that way.

Q. Can you not produce the check with which the premium for this insurance was paid?

A. Well, I don't know whether I could, but very likely, and if I can I will do it. I think I must have probably all the checks.

107 Q. I would be glad if you can produce the check or the little cash-book which I kept.

A. I want to state here that the idea of any defense being set up to this matter came from me in any way whatever is not true, for when it was suggested to me first by Mr. White I protested against it. I have uniformly refused to have anything to do with or take any part in it. I do not feel that under the unfortunate circumstances in which my family was situated that it was prudent for me to undertake to give any advice or take any responsibility of it, so far as I was concerned.

That money was given to me in good faith to be used in building

on the property, and would have no part nor lot in any resistance to the claim.

I don't mean by that to pass any opinion as to the propriety or impropriety of my daughters setting up this defense; that is a matter which, for the reasons given, I decline to interfere with in any way whatever.

Redirect examination by Mr. WHITE:

Q. You state in your cross-examination, Mr. Scammon, that this insurance was in your own name?

A. Yes, sir.

Q. It was provided, however, in that policy, was it not, that
108 the loss on that policy should be payable to the Connecticut Mutual Life Insurance Company—the mortgage?

A. Yes, sir; that was so.

J. YOUNG SCAMMON.

Subscribed & sworn to before me, this 12th day of June, 1877.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

EXHIBIT B, SCAMMON.

$15,000.00. CHICAGO, *December* 16, 1871.

[2-cent int. revenue stamp.]

Liverpool & London & Globe Insurance Co., New York:

Pay to the order of Connecticut Mutual Life Ins. Co. fifteen thousand dollars, value received, and charge the same to account of loss under policy No. 1,290,633.

No. 152. C'k 52.

ARTHUR PELL, *Aj't Sec'y.*
A. M. WARREN, *Gen. Ag't.*

(On the same is endorsed:) No. 43. Paid 8 Jan., 1872. Chicago loss, 5802. Account by cheque 52 for $15,000. Favor Am. Ex'g.
Nat'l Bank. Pay J. Young Scammon or order. Jacob L.
109 Greene, sec'y. J. Young Scammon. Pay to the order of the American Exchange Nat'l Bank, New York city. Sam. S Rogers, sec'y. Received payment. American Exchange Nat'l Bank.

Testimony taken before Henry W. Bishop, Master in Chancery of said Court, Tuesday, the 12th day of June, A. D. 1877.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Complainant,
vs.
J. YOUNG SCAMMON, Defendants.

Present: Robert T. Lincoln, Esq., of counsel for the complainant, and Mr. White, of counsel for Florence A. D. Reed and Arianna E. Scammon, and the witness below named.

FLORENCE A. D. REED, a witness on behalf of herself and Arianna E. Scammon, being first duly sworn, was examined in chief by Mr. WHITE, and deposes and says as follows:

Q. I will ask you, Mrs. Reed, whether any part of the money
110 received from the Connecticut Mutual Life Insurance Company under this original mortgage was paid to you?

A. No; it was not.

Q. Did you make any application for this loan?

A. I *do* not.

Q. I will ask you, Mrs. Reed, if you have ever seen that agreement before, or whether you did see it at any time—Exhibit C?

A. I did not; I saw it last Saturday.

Q. Do you know anything about the arrangement made between your father and the Connecticut Mutual Life Insurance Company in reference to this insurance money?

A. No; I did not.

Q. Did you ever consent in any way to have the moneys collected under this insurance policy applied in making improvements upon the premises in question, or in any other way?

A. I never knew anything about it; was never consulted.

Q. You knew that there was insurance upon the property, did you not?

A. O, yes; at the time the mortgage was made it was specified that the property should be insured.

Q. Did you ever authorize your father or authorize the Connecticut Mutual Life Insurance Company to apply this insurance
111 money in any other way than as specified in the mortgage it should be applied?

A. I never knew anything about it after the mortgage was made.

Q. I will ask you if you have ever seen that draft before, "Exhibit B?"

A. I never saw it until last Saturday. I asked to see the draft of Mr. Scammon.

Q. Then you knew nothing about the transaction as between Mr. Scammon and the Connecticut Mutual Life Insurance Company in relation to this insurance money at all?

A. No; I did not.

Cross-examination by Mr. LINCOLN:

Q. Mrs. Reed, you have stated that you did not personally receive any part of the money which was secured by this mortgage when the loan was made?

A. No, sir.

Q. Was it your expectation that you would receive that money personally when you signed the paper?

A. No, sir; it was not.

Q. What was your expectation in reference to that?

A. That the building would be erected.

Q. By whom?

A. By my father.

Q. Out of that money?
A. Yes, sir.
Q. Was it or was it not so done?
112 A. It was erected.
Q. The money was paid over on the loan as you expected it to be paid?
A. Certainly.

Redirect examination by Mr. WHITE:

Q. Did you receive any part of the rents after this building was put up?
A. No, sir.

FLORENCE A. D. REED.

Subscribed & sworn to before me this 12th June, 1877.
H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

ARIANNA E. SCAMMON, a witness on behalf of Florence A. D. Reed and Arianna E. Scammon, being duly sworn, was examined-in-chief by Mr. WHITE, and testifies as follows:

Q. Do you know anything about this insurance matter at all?
A. No, sir.

ARIANNA E. SCAMMON.

Subscribed & sworn to before me this 12th June, 1877.
H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

113 *Testimony taken before Henry W. Bishop, Master in Chancery of said Court, out of Time Provided by the Rules of Court, by Stipulation and Consent of Counsel on both Sides, for the Purpose of being read on the hearing of this Cause, Friday, the 7th day of February, A. D.* 1879.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Complainant.
vs.
J. Y. SCAMMON, FLORENCE A. D. REED, ARIANNA E. SCAMMON, *et al.*, Defendants.

Present: Edward S. Isham, Esq., solicitor for complainant, and C. F. White, Esq., defendants' solicitor.

ANSON SPERRY, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. ISHAM, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. Anson Sperry; age, fifty-four; lawyer; doing business in Chicago.

Q. State your relations, if any, to the complainant in this
114 case during the years 1871 and 1872.

A. I had from July, 1871, and through that year, and during 1872, the sole management of the business matters of the Connecticut Mutual Life Insurance Company, in connection with their loans here and their financial matters.

Q. Their investments in this city?

A. Yes, sir.

Q. Please look at this instrument, which is a memorandum of agreement, dated January 5, 1872, between the Connecticut Mutual Life Insurance Company and J. Y. Scammon, and which is an exhibit known as Exhibit —— to the deposition of Mr. Scammon, already taken in this case; it is an instrument relating to the administration and application of insurance moneys arising from premises destroyed by fire in 1871, the premises being No. 90 Michigan avenue, in the city of Chicago, and state whether you are familiar with that document or not.

A. I recognize it as one being drawn up by me and presented to Mr. Scammon for signature, and am entirely familiar with it.

Q. I will ask you whether that is the sole document of its kind,
or whether that instrument was executed in duplicate.

115 A. It was executed in duplicate.

Q. How was the other one signed—by whom was it signed?

A. It was probably signed by the Connecticut Mutual Life Insurance Company; in fact it was executed by the Connecticut Mutual Life Insurance Company; whether it was by Mr. ——— I don't remember.

Q. It was executed by the Connecticut Mutual Life Insurance Company?

A. Yes, sir; it was, for Mr. Scammon.

Q. Was it committed to you by the insurance company?

A. It was.

Q. What was done with it?

A. It was surrendered to Mr. Scammon—given to him upon the execution of the one that I now hold.

Q. This, then, and the duplicate were simultaneously executed and interchanged, were they?

A. They were.

Q. State whether Mr. Scammon, after the great fire of October, 1871, applied to you, or to the Connecticut Mutual Life Insurance Company through you, seeking to have the money arising from the policies of insurance mentioned in this instrument—policies in the Liverpool & London & Globe Insurance Company—paid over to
him; and, if he did so apply, state what transpired between
116 Mr. Scammon and you, as the representative of the life insurance company, on that subject.

A. Soon after the fire in 1871, I should think in November, Mr. Scammon came to me, stating that he wanted to get back the money that was obtained, or to be obtained, in the policies of insurance in

the London & Liverpool & Globe for the purposes of rebuilding. He said that he supposed that I had power to do it at once; I, however, explained that I had no such power, and the matter would have to go before the company upon a written application made by him, setting forth the facts, and, if everything was all satisfactory, the company would authorize that money to be surrendered, to be deposited in any monied institution which he might select and as should be satisfaction to the company, to be there kept as a fund for the purpose of rebuilding the premises; and this money was to be drawn out by drafts, to be drawn by Mr. Scammon on the fund, countersigned by such person as was authorized by the company to do that, and that he would have to make a written application to the company, and I would send it on for him, and I presumed it would be all right; and thereupon Mr. Scammon did make
117 his written application to the company, and brought in, at the same time that he made this, a draft for $15,000, drawn by the London & Liverpool & Globe to the order of the Connecticut Mutual Life Insurance Company, and handed it to me to be sent forward to the company, with this letter of application.

Q. That is a draft of the fire insurance companies paying the loss?

A. Yes, sir. Mr. Scammon had this in his possession; he hadn't surrendered it before; he had it all this time in his possession. It was sent on to the company with this letter, and in due time it was returned to me with the consent of the company authorizing that course to be pursued. The papers were executed between Mr. Scammon and the Connecticut Mutual Life Insurance Company in duplicate, and this is the one which is presented to me here, which was obtained with Mr. Scammon's consent and sent to the company after the transaction was completed. The draft was endorsed over by them to be surrendered upon this transaction being completed.

Q. Did you deliver the draft to Mr. Scammon?

A. I did.

Q. Under and in pursuance of the terms of this duplicate agreement?

118 A. I did. Mr. Scammon was requested by me to endorse in writing upon the back of the agreement, which is the one presented to me, the institution in which he wished this money deposited; and he did thereupon make that endorsement, requesting that it be deposited in the Marine Company of Chicago under the terms of that agreement.

Q. What did you do with this draft after you received it from Hartford and proposed this agreement in duplicate; where did you go and find Mr. Scammon and transact the business with him?

A. To the best of my recollection, and I think I am not mistaken, it was in the office of the Marine Company, Mr. Scammon's institution, that he was president of.

Q. In what capacity did you deliver this draft to Mr. Scammon to be received by him and for what purpose?

A. Well, I took the check with these papers to the Marine Bank; Mr. Scammon was president of the Marine Bank; that was the bank that he directed this to be deposited in, and it was done there

in the office of the Marine Bank, deposited under the terms and conditions of this contract

Q. It was delivered to him there as the officer representing the Marine Bank?

119 A. Yes, sir.

Q. He was president of the bank?

A. He was president and manager of the bank, and did all the business of the bank. It was my custom in all cases, whenever any insurance was handed back to any party for the purpose of rebuilding, to require them to intimate upon the back of the agreement the bank that they wished to deposit in, and to go with them personally to the bank and leave with the officers of the bank a blank copy of this, showing just the conditions upon which the money was deposited, and that it was a special deposit and should only be drawn out in such a way.

Q. Did you understand that you had conformed to that custom when you thus transacted this business with Mr. Scammon, the president of the Marine Bank, in the office of the bank?

A. Well, I could not have done any more, and I did all that I could do, and Mr. Scammon was president of the bank.

Q. You did it for that purpose?

A. I did it for that purpose.

Q. That was your understanding?

A. That was my understanding. I was specially careful on that point that it should go into the bank with the understanding of the officers of the bank.

120 Q. After you had made this transfer did you or not understand and consider that these moneys had been deposited with the Marine Company subject to the requirements of this duplicate agreement?

A. Yes, sir; most decidedly.

Q. Have you ever countersigned, or has the company or any one authorized by the company here ever countersigned, any checks drawn against this money and against the fund so deposited in the bank for the purpose of rebuilding this property or for any other purpose?

A. No one whatever.

Q. Did you ever give Mr. Scammon any authority to draw out these moneys from the Marine Bank?

A. No, sir.

Q. And disturb that special deposit so made?

A. No, sir.

Cross-examination by Mr. WHITE:

Q. Do I understand you, Mr. Sperry, that there were exact duplicate copies made, and this is an exact copy of the one delivered to Mr. Scammon, except that there was signed by the Connecticut Mutual Life Insurance Company?

A. They were in duplicate, and I have no doubt it is, because I was very careful that they should be.

121 Q. Did the defendant, Florence A. D. Reed, and Arianna

E. Scammon apply to you or ask you to pay the money to Mr. Scammon, or the Marine Company, in the manner you have stated or in any other manner?

A. They did not; I never saw them; they had no connection with the business; the insurance went directly; that is, it ran to Mr. Scammon and was turned over by him in the way I have testified.

Q. They never authorized you to apply this insurance money in any other manner than that provided for in the agreement, I understand?

A. I never saw them or had any conversation or business with them connected with the matter in any way or shape.

Q. This money was, I understand you to state, deposited in the Marine Company under this contract or agreement?

A. I so understood it in the conversation at the time.

Q. And, as far as you know, it never has been drawn out under that agreement?

A. No, sir; it has not, as far as I know.

Q. As far as you know it still remains in the Marine Company?

A. Yes, sir; if there is anything there.

Mr. ISHAM:

122 Q. Did Florence A. D. Reed or Arianna E. Scammon ever assert or pretend to you that they were in any wise interested in this insurance money?

A. Never.

Q. Did you ever know, until after the commencement of this suit for foreclosure, that they claimed or pretended to have any interest in it; if so, how did you learn it?

A. The first I knew of their setting up or making any claim to the insurance was after the filing of this bill.

Mr. WHITE:

Q. You did know, however, that they were interested in the property itself, did you not?

A. Yes, sir; I knew that they had executed the mortgage and that they had an interest in the property.

ANSON SPERRY.

Subscribed & sworn to before me this 7th February, 1879.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

"EXHIBIT B, SCAMMON.

$15,000. CHICAGO, *December* 16, 1871.

[U. S. (2) inter. rev. stamp.]

Liverpool & London & Globe Insurance Co., New York.

Pay to the order of Connecticut Mutual Life Ins. Co. fifteen
123 thousand dollars, value received, and charge the same to account of—

No. 152. C'k 52. ARTHUR PELL, *Aj't Sec'y.*
WM. WARREN, *Gen. Ag't.*

Loss under policy No. 1,290,633.

Know all men by these presents, that we, J. Young Scammon, Florence A. D. Scammon, and Arianna E. Scammon, all of the city of Chicago, in the county of Cook and State of Illinois, are held and firmly bound unto the Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, in the penal sum of sixty thousand dollars, lawful money of the United States of America, to be paid unto the said The Connecticut Mutual Life Insurance Company, its successors or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at the city of Chicago, this
124 tenth day of September, in the year of our Lord one thousand eight hundred and sixty-six.

The condition of this obligation is such that if the above-bounden J. Young Scammon, Florence A. D. Scammon, and Arianna E. Scammon, their heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, unto the above-named The Connecticut Mutual Life Insurance Company, its successors or assigns, the principal sum of thirty thousand dollars ($30,000) on the tenth day of September which will be in the year of our Lord one thousand eight hundred and seventy-one, with interest for the same to be computed from the day of the date hereof, at and after the rate of eight per centum per annum; which said interest shall be paid half yearly, to wit, on the tenth day of each of the months of March and September which will be in each and every year until the said principal sum shall be fully paid; which said interest payments, until the said principal sum shall become due, are specified in, and further secured by, ten coupons given herewith; and the said payments, both of principal and interest, shall be made at such place in the city of New York, in the State of New York, as the said
125 The Connecticut Mutual Life Insurance Company, its successors or assigns, may from time to time, in writing, appoint, and, in default of such appointment, then at the office of said The Connecticut Mutual Life Insurance Company, in the city of Hartford, in the State of Connecticut, then and in such case this bond to be void; otherwise, to remain in full force and virtue.

Provided, nevertheless, and it is hereby expressly agreed and fully understood, that if default be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of thirty days after the same shall become due and payable, according to the above condition, then, and in that case, the principal sum above mentioned, together with all arrearages of interest thereon, shall, at the option of the said The Connecticut Mutual Life Insurance Company, its successors or assigns, thereupon become due and payable, and shall be collectable, without notice, immediately, or at any time after any such default, anything hereinbefore contained to the contrary notwithstanding.

It is hereby expressly declared that this bond or obligation

is made under, and is, in all respects, to be construed
126 by, the laws of the State of Illinois, and is given for an actual loan of money, made at the city of Chicago aforesaid, by the said The Connecticut Mutual Life Insurance Company, to the said J. Young Scammon, Florence A. D. Scammon, and Arianna E. Scammon on the day of the date hereof.

This bond is secured by mortgage of even date herewith, which is duly stamped according to law; the stamps thereto affixed and canceled amounting to thirty dollars.

Y. YOUNG SCAMMON.
FLORENCE A. D. SCAMMON.
ARIANNA E. SCAMMON.

1867, Sept. 10. This bond reduced to $20,000, by transfer of $10,000 to Marine Company, March 1½, 1872.

Interest paid on this bond to March 10, 1872, $800.

Sept. 9, 1872. Interest paid on this bond to Sep. 10, 1872, $800.

1873, March 17. Interest paid on this bond to March 10, 1873, $800.

1873, Sept. 12. Interest paid on this bond to Sept. 10, 1873, $800.

Whereas we, J. Young Scammon, Florence A. D. Scammon, and Arianna E. Scammon, all of the city of Chicago, in the county of Cook and State of Illinois, are justly indebted to the Con-
127 necticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, in the sum of thirty thousand dollars ($30,000), an actual loan of money made to us in Chicago, and secured to be paid by our bond, bearing even date herewith, payable in the penal sum of sixty thousand dollars, but conditioned in effect for the payment of the principal sum of thirty thousand dollars on the tenth day of September, in the year of our Lord one thousand eight hundred and seventy-one, with interest for the same at the rate of eight per centum per annum, payable half yearly, both principal and interest payable at such place in the city of New York, in the State of New York, as the said The Connecticut Mutual Life Insurance Company, its successors or assigns, may from time to time, in writing, appoint, and, in default of such appointment, then at the office of said The Connecticut Mutual Life Insurance Company, in the city of Hartford, in the State of Connecticut, with a proviso thereunder written that if default be made in the payment of any of the
128 interest, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of thirty days after the same shall become due and payable according to said condition, then and in that case the principal sum aforesaid, with all arrearages of interest thereon, shall, at the option of the said The Connecticut Mutual Life Insurance Company, its successors or assigns, thereupon become due and payable and shall be collectable without notice immediately or at any time after any such default, anything therein before contained to the contrary notwithstanding.

Now, therefore, know all men by these presents, that we, the said

J. Young Scammon, Florence A. D. Scammon, and Arianna E. Scammon, for the purpose of securing the prompt and punctual payment of said bond or obligation, and also the prompt and punctual payment of the interest, payable half-yearly as aforesaid, at the time and times and at the places respectively mentioned in said bond, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Mark Skinner, or any other attorney of any court of record in the United States of America, to be our true and lawful attorney and the attorney
129 of each of us, irrevocable, for us and in our names, places, and stead to appear in any court of record, in term time or vacation, in any of the States, Territories, or districts of the United States, at any time after default shall have been made in the payment of the principal or either or any of the payments of interest to be made half yearly, as aforesaid, according to the true intent and meaning of said condition of said bond and the proviso thereto, to waive service of process and confess a judgment in favor of the said The Connecticut Mutual Life Insurance Company, its successors or assigns, upon said bond, for so much of principal and interest as shall at the time of the entry of such judgment be and remain unpaid upon said bond, due or not due, according to the true intent and meaning of the condition of said bond and the proviso thereto, together with all costs, charges, and twenty-five dollars in addition thereto, as an attorney's fee; and for such purpose to file a *cognovit* for such amounts, with an agreement therein that execution may issue forthwith; and that no writ of error or appeal shall be prose-
cuted upon such judgment, nor any bill in equity filed, or
130 any other proceeding had to interfere in any manner with the operation of such judgment, nor any motion made to quash, set aside, or stay any execution that may be issued thereon. And further the said attorney is hereby empowered at his option, in case of default being made or suffered in the payment of any of the interest coupons given with said bond, when due and payable, to waive service of process and confess a judgment in favor of said The Connecticut Mutual Life Insurance Company, its successors or assigns, upon such of said coupons as shall at such time be due by the terms thereof, and then remaining unpaid, for so much money as may then be due thereon, according to the tenor thereof, together with all costs and charges, and ten dollars in addition for each of such coupons, as an attorney's fee.

And for the purpose of confessing any such judgment or judgments upon any of the coupons given with said bond, as above provided, a copy of this power of attorney may be filed in the office of the clerk of any court of record, and when so filed and certified to by such clerk shall be deemed and taken as sufficient for all the purposes contemplated by these original presents, and shall have
131 the same force and effect as would this original warrant of attorney if so filed as aforesaid, the said filing whereof being hereby expressly waived, and to release all errors that may intervene in the entering up of all or any of said judgments, or issuing execution or executions thereon, or in any of the proceedings had there-

under; hereby ratifying and confirming all that our said attorney may legally do under and by virtue hereof.

Witness our hands and seals at Chicago aforesaid, this 10th day of September, A. D. 1866.

J. YOUNG SCAMMON. [SEAL.]
FLORENCE A. D. SCAMMON. [SEAL.]
ARIANNA E. SCAMMON. [SEAL.]

No stamp required.

This indenture, made this tenth day of September, in the year of our Lord one thousand eight hundred and sixty-six, between J. Young Scammon, a widower, and Florence A. D. Scammon and Arianna E. Scammon, who are unmarried, all of the city of Chicago, in the county of Cook and State of Illinois, parties of the first part, and the Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and
132 located and doing business in the city of Hartford, in the State of Connecticut, party of the second part:

Whereas the said parties of the first part are justly indebted unto the said party of the second part in the sum of thirty thousand dollars, lawful money of the United States of America, an actual loan of money this day made by said party of the second part to the said parties of the first part, at the city of Chicago, in conformity to and under and to be construed by the laws of the State of Illinois, secured to be paid by the certain bond or obligation of the said J. Young Scammon, Florence A. D. Scammon, and Arianna E. Scammon, bearing even date herewith, in the penal sum of sixty thousand dollars, conditioned for the payment unto the above-named party of the second part, its successors or assigns, of the principal sum of thirty thousand dollars ($30,000) on the tenth day of September which will be in the year of our Lord one thousand eight hundred and seventy-one, with interest for the same to be computed from the day of the date thereof at and after the rate of eight per centum per annum, which said interest shall be paid half yearly, to wit, on
133 the tenth day of each of the months of March and September which will be in each and every year until the said principal sum shall be fully paid; which said interest payments, until the said principal sum shall become due, are specified in and further secured by ten coupons given therewith; and the said payments, both of principal and interest, shall be made at such place in the city of New York, in the State of New York, as the said The Connecticut Mutual Life Insurance Company, its successors or assigns, may from time to time, in writing, appoint; and, in default of such appointment, then at the office of said The Connecticut Mutual Life Insurance Company, in the city of Hartford, in the State of Connecticut, with a proviso thereunder written, whereby it is expressly agreed and fully understood that if default be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of thirty days after the same shall become due and payable, according to the above condition,

then, and in that case, the principal sum above mentioned,
134 together with all arrearages of interest thereon, shall, at the option of the said The Connecticut Mutual Life Insurance Company, its successors or assigns, thereupon become due and payable, and shall be collectable without notice immediately, or at any time after any such default, anything thereinbefore contained to the contrary notwithstanding, as by the said bond and the condition thereof and the proviso thereunder written, reference being thereto had, may more fully appear:

Now, therefore, this indenture witnesseth that the said parties of the first part, for the better securing the payment of the said sum of money mentioned in the condition of said bond, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the sec-
135 ond part, its successors and assigns, forever, all that certain lot, piece, or parcel of land situate, lying, and being in the city of Chicago, in the county of Cook and State of Illinois, known and described as being lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, forever: Provided always, and these presents are upon this express condition, nevertheless, That if the said parties of the first part, their
136 heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, unto the said party of the second part, its successors or assigns, the said principal sum of money mentioned in the condition of said bond, and the interest thereon, at the time and times respectively and in the manner mentioned in the condition of said bond, according to the true intent and meaning thereof, and shall and do promptly and faithfully fulfill and perform all the covenants and agreements hereinafter mentioned, that then and from thenceforth these presents and the estate hereby granted shall cease, determine, and be utterly null and void, anything hereinbefore contained to the contrary notwithstanding.

And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, and agree to and with the said party of the second part, its successors and assigns, that they will well and truly pay unto the said party of the second part, its successors or assigns, the said principal sum of money men-

tioned in the condition of said bond, and the interest thereon,
137 according to the said condition; and also that they will not at any time hereafter, until the said principal sum and the interest thereon shall be fully paid, suffer said premises, or any portion thereof, to be sold for any tax or assessment whatsoever, nor will they do, or permit to be done, to, in, upon, or about said premises, anything that may in any wise tend to impair the value thereof, or to weaken, diminish, or impair the security intended to be effected under and by virtue of this instrument.

And in the event that said party of the second part, it successors or assigns, shall expend any money either to save said premises or any part thereof from any sale for taxes or assessments or to redeem the same from any such sale or to protect the title or possession of said premises, then all such money so expended shall be a new and additional principal sum of money, secured by this instrument, and shall be payable and may be collected immediately or at any time thereafter, with interest thereon at the rate of ten per centum per annum from the time of so paying the same.

And, further, that they, their heirs, executors, and admin-
138 istrators, shall and will, at all times hereafter, until said principal sum of money, and all arrearages of interest thereon, shall be fully paid, keep all the buildings (outhouses excepted) now situate, or that may hereafter be erected, upon said premises fully insured against loss or damage by fire in some good and responsible insurance company or companies (satisfactory to the said party of the second part, its successors or assigns, or its or their authorized agent) in the fair insurable value of such buildings, and will legally and properly assign and deliver to the said party of the second part, its successors or assigns, each, all, and every, the policies of insurance therefor, as soon as and whenever such insurance shall be effected, and will also deliver to said party of the second part, it successors or assigns, or its or their authorized agent, all premium or renewal certificates received for the payment of the premium upon such policy or policies of insurance as soon as and whenever such certificates shall be issued, and, in default of so doing, the said party of the second part, its successors or assigns, at its or their option, may effect
139 such insurance in its or their name or names, or otherwise, and the premium money paid therefor shall be a charge upon said premises, and shall be secured by this instrument in the same manner as the said principal sum of money above mentioned is secured, and such premium money shall be paid by said parties of the first part, their heirs and legal representatives, to said party of the second part, its successors or assigns, on demand, and may be collected at any and all times after the same shall have been paid, with interest thereon at the rate of ten per centum per annum from the time the same shall be advanced, and the said party of the second part, its successors or assigns, shall hold each and all such policies of insurance so received, by assignment or otherwise, as collateral and additional security for said principal sum of money and interest, and shall have the right to collect and receive any and all money and sums of money that may at any time become collect-

140 able or receivable upon each, all, and every of such policies of insurance, and apply the same, when received, in the same manner, as far as possible, as is hereinafter provided for in case of a sale of said above-described premises under the power of sale hereinafter contained. But nothing herein contained shall be construed as requiring the said party of the second part, its successors or assigns, to incur any expense or make any effort to collect any money that may become due on any of such policies of insurance; but if it or they shall elect not to collect the same they shall make such election within a reasonable time after such money shall become collectable, and on demand of said parties of the first part, or their legal representatives, shall thereupon forthwith, after making such election not to collect, reassign and deliver such policy or policies of insurance to said parties of the first part, their executors, administrators, or assigns.

But it is hereby expressly agreed and understood by and between the parties to these presents, that if default shall be made in the payment of the said principal sum of money above
141 mentioned, or of the interest that may grow due thereon, or of any part thereof, at the time and times, respectively, when the same ought to be paid, as set forth in the said condition of said bond, or if the said parties of the first part, their heirs, executors, or administrators, shall at any time hereafter until said principal sum and all arrearages of interest thereon shall be fully paid suffer said premises or any part thereof to be sold for any tax or assessment whatsoever, or shall do or permit to be done to, in, upon, or about said premises or any part thereof anything that may in any wise tend to diminish the value thereof, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or shall neglect or fail to keep all the buildings (except outhouses) that now are or hereafter may be situate upon said premises fully insured, and the policies of insurance therefor assigned to said party of the second part, its successors or assigns, and delivered to it or them or its or their authorized agent, together with all premium or renewal certificates received from time to time for
142 the payment of the premium upon such policies, as hereinbefore covenanted and provided, or shall fail in any wise promptly and faithfully to fulfill, keep, and perform, as well in spirit as in letter, all and singular the covenants and agreements contained in these presents, or if either or any of said covenants and agreements shall at any time be broken in any respect whatsoever, that then and from thenceforth it shall be lawful for the said party of the second part, its successors or assigns, either in person or by attorney, to sell and dispose of all and singular the said premises hereby granted or intended so to be, and all benefit and equity of redemption of the said parties of the first part, their heirs or assigns, therein at public auction, having first given thirty days' notice of the time and place of such sale (such sale to be made in the city of Chicago aforesaid) by advertisement in any one of the daily newspapers that may at that time be published in said city of Chicago, personal notice of such sale to said parties of the first part,

their heirs, executors, administrators, or assigns, or any and all
143 persons claiming by, through, or under them, being hereby expressly waived and excused, and either in the name of the said party of the second part, its successors or assigns, or at its or their option, as the attorney of the said parties of the first part for that purpose by these presents duly and irrevocably authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple, and all the recitals that may be contained in such deed or deeds setting forth the fact of due notice, advertisement, and sale, and any and all such other facts and statements as may be proper to evidence the legality of such sale and conveyance, and that the same had been duly made in all respects so as to meet all the requirements herein contained or arising in law, and as may be necessary to convey a good title shall be deemed to be true, and shall be considered and taken as *prima facie* evidence of all the facts and matters set forth in such recitals, and
144 such deed or deeds, whether made in the name of the said parties of the first part, or in the name or names of the said party of the second part, its successors or assigns, shall be effectual to pass the title, and out of the money arising from such sale to pay and retain—

Frst. All the costs, charges, and expenses of such advertisement, sale, and conveyance;

Second. All money and sums of money which said party of the second part, its successors or assigns, may at any time before such sale pay or expend either to affect any insurance upon said premises as hereinbefore provided or to redeem said above-described premises from any sale or sales for taxes or assessments, or to save the same from such sale, or to protect the title or possession of such premises, or any part thereof, with interest on all money so advanced or expended at the rate of ten per centum per annum from the time of so paying or expending the same up to the time of such sale;

Third. All said principal money and accrued interest thereon that shall at the time of such sale remain unpaid, whether due or not due; and

145 Fourth. Rendering the overplus of the purchase-money, if any there be, unto the said J. Young Scammon, Florence A. D. Scammon, and Arianna Scammon, their heirs or assigns, on reasonable request. Which sale so to be made shall be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or any part of them.

It is expressly understood and agreed by and between the parties to these presents that in case of a sale of said premises under the power of sale hereinbefore mentioned the said party of the second part, its successors, assigns, or attorney, may sell said premises, either in parcels or all together, as it or they shall see fit, and may also adjourn said sale if it or they shall see fit, from time to time, at its or their discretion.

And the said parties of the first part, for the consideration above mentioned, do hereby expressly waive and release all right and benefit which they have in and to said premises, or to which
146 they may be entitled under and by virtue of an act entitled "An act to exempt homesteads from sale on execution," approved February 11th, A. D. 1851, and also an act entitled "An act to amend an act to exempt homesteads from sale on execution," approved February 17th, A. D. 1857, as well as any and all other acts of a like character or for a similar purpose.

And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, bargain, and agree to and with the said party of the second part, its successors and assigns, that they are well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that the same are free from all other and former grants, mortgages, liens, incumbrances, and tax sales of any and every name, kind, nature, or description whatever, and against all and every person or persons lawfully claiming or to claim
147 the whole or any part thereof, will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, at Chicago aforesaid, the day and year first above written.

J. YOUNG SCAMMON. [SEAL.]
FLORENCE A. D. SCAMMON. [SEAL.]
ARIANNA E. SCAMMON. [SEAL.]

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

I, John Forsythe, a notary public in and for the city of Chicago, in the county and State aforesaid, do hereby certify that J. Young Scammon and Florence A. D. Scammon and Arianna E. Scammon, who are all personally known to me to be the real persons whose names are subscribed to the foregoing instrument in writing, appeared in person before me this day and severally acknowl-
148 edged that they executed and delivered the same as their free and voluntary act for the uses and purposes therein set forth.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at Chicago, this first day of October, in the year of our Lord one thousand eight hundred and sixty-six.

JOHN FORSYTHE,
Notary Public.

This agreement, made this fourth (4th) day of June, in the year of our Lord one thousand eight hundred and sixty-six (A. D. 1866), between J. Young Scammon, of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Washington Smith, of the same place, party of the second part, witnesseth: Whereas the said party of the first part is the owner of a certain lot or parcel

of land in Fort Dearborn Addition to Chicago, in the county of Cook aforesaid, known as lot number five (5), in block number eleven (11), in said Fort Dearborn Addition, and the said party of the second part is the owner of a certain other lot or parcel of land next adjoining the said first-described lot, on the north side thereof, and known as lot number four (4), in block number eleven (11), in
149 said Fort Dearborn Addition to Chicago; and whereas said party of the first part is about to cause a building to be erected on said lot number five (5), and is desirous of locating and constructing the north wall thereof on the dividing line between said lots number four (4) and five (5) in such a manner that one-half of said wall shall stand on either side of said dividing line, and that the said wall, when erected, used, and paid for as hereinafter provided, shall be a party wall for the common use and benefit of the said parties, their heirs and assigns:

Now, therefore, the said party of the second part does hereby give and grant unto the said party of the first part license and permission to erect and build one-half of the north wall of the building so about to be erected by him as aforesaid on the north side of and adjoining the dividing line aforesaid between said lots four (4) and five (5), and extending from the curb wall of the street in front of said lots eastward to the curb wall in the rear thereof.

The said party of the first part, in consideration of the license aforesaid granted to him, does hereby covenant and agree to erect the said wall of stone and brick in a solid and substantial manner, of sufficient depth and width below the surface of the ground to form a
150 permanent party wall, said wall above the stone foundation to be not less than twelve inches in thickness; and that said party of the second part, his heirs and assigns, shall, upon payment to the said party of the first part, his heirs or assigns, of one-half of the value of the said wall as hereinafter provided, have, own, and be entitled to use the north half thereof, and shall also be entitled to the full benefits thereof as a party wall, in erecting and maintaining buildings upon said lot number four (4).

The said party of the second part further agrees that, in case the said party of the first part shall, under the license and permission herein given, erect the wall aforesaid of suitable strength for a party wall, he will, and his heirs and assigns shall, whenever and as soon as he shall desire to use the same in the erection of a building upon said lot number four (4), pay to the said party of the first part, his heirs or assigns, one-half of the value of said wall at the time of using the same; and it is agreed that in case of a disagreement between the parties as to the value of said wall, the same shall be determined by the award of three disinterested men—one to be chosen by each of the said parties, and the two so chosen to select a third.

151 It is further mutually agreed and understood by and between the said parties that said party wall, when so erected, used, and paid for as aforesaid, shall be and become a party wall, and shall continue such for the common and equal benefit and advantage of the said parties, their respective heirs and assigns, so

long as the same shall stand, and shall be maintained and kept in repair at the joint and equal expense of the said parties, their respective heirs and assigns; and it is further agreed and understood that this instrument and the covenants and provisions hereof shall be binding upon the heirs and assigns of the respective parties.

In witness whereof, we, the said parties, have hereunto set our hands and seals the day and year first above written.

The alterations in this document, that were necessary to change the names of Samuel Hule & John V. Ayer and substitute that of Washington Smith, were made before the instrument was executed.

The names "Samuel Hale & John V. Ayer" erased, and the name "Washington Smith" interlined on seventh line from top of first page before signing.

Y. YOUNG SCAMMON. [SEAL.]
WASHINGTON SMITH. [SEAL.]

Signed, sealed, & delivered in presence of—
SANFORD E. LORING, *Witness.*

STATE OF ILLINOIS, } *ss:*
County Cook, City of Chicago, }

152 I, Geo. A. Ingalls, a notary public in & for the city of Chicago, in the county of Cook & State of Illinois, do hereby certify that Washington Smith, who is personally known to me as the same person whose name is signed to the annexed agreement, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said agreement freely and voluntarily for the uses and purposes therein expressed.

Given under my hand and notarial seal, this 18th day of July, A. D. 1866.

GEO. A. INGALLS,
Notary Public.

STATE OF ILLINOIS, } *ss:*
Cook County, City of Chicago, }

I, John Forsythe, a notary public in and for the city of Chicago, in the county and State aforesaid, do hereby certify that J. Young Scammon, who is personally known to me to be the same and real person whose name is subscribed to the annexed agreement as having executed the same, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-fourth day of July, A. D. 1866.

JOHN FORSYTHE.
Notary Public.

153 Whereas, since the making of the annexed agreement, the party wall therein mentioned has been erected: Now, therefore, this agreement, made this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and sixty-seven, witnesseth:

That it is agreed that the party wall now erected is to be considered as built upon the dividing line between original lots four (4) and five (5), in block eleven (11), in the Fort Dearborn Addition to Chicago; and this is an agreement running with the land, and to be forever binding upon our heirs, legal representatives, and grantees, so that there can be no further question as to the dividing line between said lots, the same being the centre of said party wall.

This agreement is made in consideration of the further sum of three hundred dollars to the said Scammons in hand paid by said Washington Smith, the receipt whereof is hereby acknowledged.

In witness whereof said J. Young Scammon, Florence A. D. Scammon, Arianna, and the said Washington Smith, have hereunto set their hands and seals the day and year aforesaid.

J. YOUNG SCAMMON. [SEAL.]
FLORENCE A. D. SCAMMON. [SEAL.]
A. E. SCAMMON. [SEAL.]
WASHINGTON SMITH. [SEAL.]

154 STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

I, Charles T. Scammon, a notary public in and for the city of Chicago, the county of Cook, and State aforesaid, do hereby certify that Y. Young Scammon, Florence A. D. Scammon, Arianna Evans Scammon, and Washington Smith, who are all personally known to me to be the same and real persons whose names are subscribed to the annexed agreement as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said agreement as their free and voluntary act for the uses and purposes therein expressed.

Given under my hand and notarial seal, this twenty-fifth day of February, A. D. 1867.

CHAS. T. SCAMMMON,
Notary Public.

Memorandum of agreement made and entered into this fifth day of January, A. D. 1872, between the Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, of the one part, and
155 J. Young Scammon, of the city of Chicago, in the county of Cook and State of Illinois, of the other part, witnesseth: That whereas the said party of the second part did, on the day — day of ——, A. D. 1866, make, execute, and deliver to the said party of the first part certain indenture of mortgage, bearing date on that day, on the following-described premises, situate and being in the city of Chicago aforesaid, to wit:

Lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, for the purpose of securing the payment of the certain bond or obligation of the said party of the second part, bearing even date with said mortgage in the penal sum of

sixty thousand dollars, conditioned for the payment to said party of the first part of the sum of thirty thousand dollars on the tenth day of Sept., A. D. 1871, with interest as therein stated, on which said mortgage has been paid ten thousand dollars of principal; and whereas the building on said premises known as No. 90 Michigan avenue, in said city of Chicago, *were* insured in the following companies and in the following amounts, to wit, the Liverpool, London and Globe, in the sum of fifteen thousand dollars, which said policies of insurance *was* held by said party of the first part as collateral security for the payment of said loan, any loss on said policies to be paid to said party
156 of the first part; and whereas said building has been destroyed by fire and the insurance moneys to be received on said policy or policies are subject to be paid to said party of the first part, in accordance with the conditions of said mortgage; and whereas said party of the second part desires said party of the first part to permit and suffer said insurance money to be used in and upon said mortgage premises in the reconstruction of said building or buildings thereon, and said first party is willing to have said insurance money so used, upon the terms and conditions hereinafter set forth, and to assist in the collection and receipt thereof by said second party from said fire insurance company or companies for the purposes aforesaid: It is, therefore, mutually agreed by and between the parties hereto that said party of the first part waives, except as hereinafter provided, its right to apply on the said indebtedness the moneys that may be received on said policy or policies of insurance, and that any and all such sum or sums of money as shall be so collected from said fire insurance company or companies by either of the parties to this instrument shall be deposited in such bank or banks as shall be selected by the party of the second part and
157 assented to by the said first party, to the credit and at the risk of said party of the second part, to be used in the erection of said building or buildings on said mortgaged premises.

That said money shall be paid out and expended in the erection of said building or buildings from time to time on the drafts or checks of said party of the second part, countersigned by the said party of the first part, or its duly authorized agent or attorney, until said insurance money is fully expended as herein provided on said mortgaged premises. That said drafts or checks shall be so countersigned upon the presentation thereof to said party of the first part, its duly authorized agent or attorney, together with the certificate of a competent and credible architect, that the amount of said check or draft, together with all previous checks or drafts drawn or paid out on said account has been actually expended in and upon said mortgaged premises in the permanent improvements thereon, and that the work and material for which the amount so expended have been paid are fully worth such sum.

EXHIBIT C, SCAMMON.

If, however, said buildings are being constructed without
158 the supervision of an architect, the affidavit of said party of

the second part to said facts may at the option of said first party be received in lieu of said architect's certificate.

And it is further understood and agreed that so soon as said building or buildings shall be in a situation to be insured said party of the second part shall cause the same to be insured in some good and responsible insurance company, in the fair insurable value thereof, and assign and deliver the same to *second* party of the second part, and as soon as said building shall become so insurable all the provisions contained in said above-described mortgage shall apply to said insurance, and said conditions are hereby made a part of this agreement.

It is also expressly understood that any receipt or acknowledgment given by said party of the first part, either alone or jointly with others, to any such insurance company or companies for the purposes aforesaid of facilitating the collection by said second party of any insurance money intended to be placed back on said mortgaged premises as aforesaid, shall not be construed as a collection of said money by said first party under the conditions of said mortgage, wherein and whereby it is provided that said first party may collect and apply
159 such insurance money upon the indebtedness secured to be paid thereby, but merely as enabling said second party to collect said insurance moneys. Said moneys are not to be so applied, and said mortgage shall remain a lien on said mortgaged premises for the full amount of the principal money mentioned in the said bond, with the interest thereon, as if said moneys had never been collected.

It is also further expressly understood and agreed that said insurance money shall be expended on said mortgaged premises as above provided, with all reasonable and proper dispatch; and that in the event that from any cause, whether the death or absence of any party or parties to this agreement or any other cause, said money shall not have been so expended within six months from the date hereof, then this agreement of waiver shall thereupon become thenceforth null and of no effect, and the right of said second party to use and expend said moneys shall thereupon cease, and said first party shall have the right to draw from the said bank or banks, upon its own check or checks, or that of its authorized agent, said insurance moneys, or so much thereof as shall not then have been act-
160 ually expended as provided in this agreement, and apply the same in payment *pro tanto* of the indebtedness secured by said mortgage, and such check or checks of said first party or its agent as aforesaid drawn at any time after the expiration of six months from the date hereof shall be a full discharge and acquittance to said bank or banks for any moneys paid thereon.

It is expressly agreed that time shall be of the essence of this agreement in all its parts, and that said agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

_____ _____. [SEAL.]

_____ _____. [SEAL.]

J. YOUNG SCAMMON. [SEAL.]

I hereby designate the Marine Company of Chicago as the banking office in which to deposit said insurance money.

J. YOUNG SCAMMON.

Deposited with the Marine Company of Chicago, January 5, 1872, by J. Young Scammon:

Gold, ———; Treasury notes, $15,000; checks, ———.

161 THE MARINE COMPANY OF CHICAGO.

(Duplicate ticket.)

EXHIBIT D, SCAMMON.

14 CONGRESS ST., CHICAGO, ILL.

Jacob L. Greene, Esq., secretary Connecticut Mutual Life Insurance Company, Hartford, Conn.

DEAR SIR: I have to send you the enclosed draft for $15,000 for insurance on property on Michigan avenue, upon which you have a mortgage of $20,000. I had supposed that Major Sperry was fully authorized to receipt for all moneys coming to me, or the Marine Company, or the Mechanics' National Bank, for insurance upon premises mortgaged to your company, and to pay the same over to me or into the Marine Company, to be expended in rebuilding Such I understood to be the intimation in the enclosed letter.

Will you please give him directions to do so, and endorse and return to me the enclosed draft?

I have commenced rebuilding all the structures upon which
162 you have insurance, and I want the money.

Yours, truly, J. Y. SCAMMON.

P. S.—The naked land upon which you have the $20,000 mortgage would sell for $30,000 cash to-morrow.

(Endorsed:) Filed March 23, 1880. W. H. Bradley, clerk.

163 Afterwards, to wit, on the thirtieth day of March, A. D. 1880, came Florence A. D. Reed and A. E. Scammon, two of the defendants, by their solicitor, and filed in said clerk's office their exceptions to the master's report in said entitled cause, which said exceptions are in the words and figures following, to wit:

Exceptions to Master's Report.

UNITED STATES OF AMERICA, *Northern District of Illinois*, } ss:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
J. YOUNG SCAMMON, FLORENCE A. D. REED, and ARIANNA E. SCAMMON *et al.* } Case No. 13741.

Exceptions taken by the defendants, Florence A. D. Reed and Arianna E. Scammon, to the report of the master in chancery, Henry

W. Bishop, of this court, to whom said case was referred to ascertain and report the amount due on the bond and mortgage referred to in complainant's bill, which report was filed herein March 23, A. D. 1880.

164 First. The said defendants except to the said master's report and to the confirmation thereof by the court for the reason that the said master, in and by his report, finds that there is due and owing to the said complainant on said bond secured by said mortgage the sum of twenty thousand dollars for the principal and the sum of $10,453.33 for interest thereon, at eight per cent., from the tenth day of September, A. D. 1873, to the date of said report, making a total of $30,453.33; whereas the said master ought to have found and so reported to the court that there was paid to said complainant, on or about December 16th, 1871, the sum of $15,000 on said bond and in satisfaction of said mortgage indebtedness, and that there is now due and owing to the said complainant on said bond secured by said mortgage, as far as the interest of these defendants in said premises is concerned, only the sum of five thousand dollars for the principal and only the sum of $2,613.33 for interest on said sum of $5,000, at eight per cent., from the tenth day of September, A. D. 1873, to the date of said report, making a total of $7,613.33, besides the amount paid for taxes on said prem-

165 ises, and that the amount so paid for taxes and the amount of said interest should be first paid out of the proceeds arising from the sale of the life estate of said defendant, J. Young Scammon, in said premises.

Wherefore these defendants, Florence A. D. Reed and Arianna E. Scammon, except to said report, and submit that the same is erroneous, and the same should not be confirmed by this court.

FLORENCE A. D. REED AND
ARIANNA E. SCAMMON,
By CHARLES F. WHITE,
Their Solicitor.

(Endorsed:) Filed M'ch 30, 1880. W. H. Bradley, cl'k.

166 Afterwards, to wit, on the first day of April, in the adjourned March term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON *et al.*
} No. 13741.

Now come the parties, by their solicitors, and this cause coming on to be heard upon the pleadings and proofs herein, and after hearing the same the court, not being now sufficiently advised in the premises, takes the same under advisement.

167 Afterwards, to wit, on the third day of January, A. D. 1881, there was filed in said clerk's office a notice of motion and affidavit of service in said entitled cause, which said motion and affidavit of service are in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs.

JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee; Charles Comstock, First National Bank of Macomb, Illinois; Hiram Wilson, The Ridgley National Bank, Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball, The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank
168 of Chicago, Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews, The United States Mortgage Company, William H. Stevens, Henry Bromley, William D. Dillard, The Manufacturers' National Bank of Racine, Alexander M. Byers, William McCullough, Ebenezer M. Byers, George Scoville, Albinus B. Wood.

Notice is hereby given to the defendants in the above-entitled cause that on Monday, the third day of January, A. D. 1881, at ten o'clock in the morning, or as soon thereafter as we can be heard, we will, on behalf of the complainant in the above-entitled cause, move the court for leave to file a supplemental bill in said cause.

ISHAM & LINCOLN,
Complainant's Solicitors.

Affidavit of Burdick Willits.

STATE OF ILLINOIS, }
County of Cook, } ss:

Burdick Willits, being duly sworn, on oath says: That he served the annexed notice upon the said defendants, Charles Comstock, Frank B. Orr, and Oswald Lockett, by delivering to each of them in person a true copy of said notice on the twenty-first day of Decem-
169 ber, A. D. 1880; that he served said notice upon the said defendants, Francis B. Peabody, Thomas C. Boyd, James J. Bufton, Farlin Q. Ball, and George Scoville, by delivering to each of them in person a true copy of said notice on the twenty-second day of December, A. D. 1880; that he served said notice on said defendant, Charles Birkenshaw, by delivering to him in person a true copy thereof on the twenty-third day of December, A. D. 1880; that he served said notice on said defendant, The Crane Brothers Manu-

facturing Company, by delivering a true copy thereof to J. W. Skinkle, the secretary of said company, on the twenty-first day of December, A. D. 1880; that he served said notice upon said defendant, The United States Mortgage Company, by delivering a true copy thereof to A. W. Sansome, the agent of said company, on the twenty-first day of December, A. D. 1880; that he served said notice upon said defendants, Charles Chandler and First National Bank of Macomb, Illinois, by leaving a true copy thereof for their solicitor, J. C. Patterson, at his usual place of abode with his mother, Mrs. R. W. Patterson, on the twenty-third day of December, A. D. 1880;
and that on the twenty-fourth day of December, A. D. 1880,
170 he mailed a true copy of said notice to each of said defendants, Charles Chandler and First National Bank of Macomb, Illinois, in sealed envelopes addressed to each of them at Macomb, Illinois, their place of residence, the postage thereon being prepaid by deponent; and he further says that on the twenty-fourth day of December, A. D. 1880, he left a true copy of said notice for said defendant, William H. Harper, at his usual place of abode with his wife, Mrs. W. H. Harper, and that on the twenty-eighth day of December, A. D. 1880, he delivered a true copy of said notice to said William H. Harper in person.

BURDICK WILLITS.

Subscribed and sworn to before me, this third day of January, A. D. 1881.

[SEAL.] WILLIAM L. GLASS,
Notary Public.

Affidavit of C. S. Sweet.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Charles S. Sweet, being duly sworn, on oath says: That he served the annexed notice on said defendants, Florence A. D. Reed and Arianna E. Scammon, by delivering a true copy thereof to their solicitor, Charles F. White, on the twenty-third day of De-
171 cember, A. D. 1880; that he served said notice upon said defendants, Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, by delivering a true copy thereof to their solicitor, John Borden, on the twenty-fourth day of December, A. D. 1880; that he deposited a true copy of said notice in the United States post office at Chicago in a sealed envelope addressed to the said defendant, Joseph S. Reed, Beaufort, Beaufort county, South Carolina (the place of residence of said Reed), the postage thereon being paid by deponent; that he served said notice on said defendant, Hiram Wilson, by delivering a true copy thereof to his solicitor, Andrew Crawford, on the twenty-second day of December, A. D. 1880; that on the same day he served said notice on said defendant, The Ridgeley National Bank, by delivering a true copy thereof to its solicitors, Messrs. Hitchcock, Dupee, and Judah; that he served said notice upon the said defendant, The Mechanics' National Bank of Chicago, by delivering a true copy

thereof to its solicitors, Messrs. McCagg, Culver and Butler, on the twenty-fourth day of December, A. D. 1880; that he served said notice on said defendants, William H. Stevens and Albinus B.
172 Wood, by delivering a true copy thereof to their solicitor, Frederick Ullman, on the twenty-third day of December, A. D. 1880; that he served said notice on said defendant, Henry Bromley, by delivering a true copy thereof to his solicitors, Messrs. Grant and Swift, on the twenty-second day of December, 1880; that he served said notice on said defendant, William D. Dillard, by leaving a true copy thereof for their solicitor, Gwynn Garnett, at his office, with his partner, William Garnett, on the twenty-second day of December, A. D. 1880; that he served said notice on said defendant, The Manufacturers' National Bank of Racine, by leaving a true copy thereof for their solicitor, Huntingdon W. Jackson, at his office, with Oliver G. Fessenden, employed in said office, on the twenty-second day of December, A. D. 1880; that he served said notice on said defendant, Mark Kimball, assignee, by leaving a true copy thereof for his solicitors, Messrs. Williams & Thompson, at their office, with J. W. Howell, employed in said office, on the twenty-second day of December, A. D. 1880; that he served said notice on said defendants, Alexander M. Byers, William McCullough, and Ebenezer M. Byers, by delivering a true copy thereof to their solicitor, Frank Baker, Esq.,
173 on the twenty-third day of December, A. D. 1880; and that on the twenty-fourth day of December, A. D. 1880, he mailed, postage prepaid, a true copy of said notice to each of said defendants last named to Pittsburgh, Pennsylvania, their place of residence.

CHARLES S. SWEET.

Subscribed and sworn to before me, this third day of January, A. D. 1881.

[SEAL.] WILLIAM L. GLASS,
Notary Public.

Affidavit of Emerson B. Tuttle.

STATE OF ILLINOIS, *County of Cook:*

Being duly sworn, on oath says: That on the twenty-fourth day of December, A. D. 1880, he served the annexed notice upon the said defendant, Benjamin E. Gallup, by leaving a true copy thereof for him at his usual place of abode, with his wife, Mrs. B. E. Gallup, not having been able to find said Gallup in person.

EMERSON B. TUTTLE.

Subscribed and sworn to before me, this third day of January, A. D. 1881.

[SEAL.] WILLIAM L. GLASS,
Notary Public.

(Endorsed:) Filed Jan'y 3d, 1881. Wm. H. Bradley, clerk.

174 On the same day, to wit, on the third day of January, A. D. 1881, in the December term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON *et al.*

Upon motion of complainant's solicitors, and upon due notice to defendants, leave is given the complainants to file a supplemental bill herein.

On the same day, to wit, on the third day of January, A. D. 1881, came the complainant, by its solicitors, and filed in said clerk's office its supplemental bill in said entitled cause, which said supplemental bill is in the words and figures following, to wit:

Supplemental Bill.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

175 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews, Mark Kimball, Assignee; Charles Comstock, First National Bank of Macomb, Illinois, Hiram Wilson, The Ridgley National Bank, Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball, The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank of Chicago, Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews, The United States Mortgage Company, William H. Stevens, Henry Bromley, William D. Dillard, The Manufacturers' National Bank of Racine, Alex-
176 ander M. Byers, William McCullough, Ebenezer M. Byers, George Scoville, Albinus B. Wood.

To the honorable the judges of said court, in chancery sitting:

Your orator, The Connecticut Mutual Life Insurance Company, the above-named complainant, brings this its supplemental bill against the above-named defendants, and thereupon it states and shows as follows:

Your orator shows that it filed its original bill of complaint in this court in the above-entitled cause on the twenty-third day of June, A. D. 1876, against the above-named defendants, and that in and by said original bill of complaint your orator prayed and sought to have an account taken of the moneys due it under the covenants of the mortgage in said original bill particularly mentioned and described, being the mortgage dated September 10, A. D. 1866, and

recorded in the recorder's office of Cook county, Illinois, October 2nd, A. D. 1866, made by said Jonathan Young Scammon, Florence A. D. Reed, formerly Florence A. D. Scammon; Arianna E. Scammon to your orator, and conveying in the said mortgage lot five, in block eleven, in Fort Dearborn Addition to Chicago, in said
177 Cook county, in the State of Illinois, there having, since the execution of said mortgage, been released from the lien thereof the south one-third of said above-mentioned lot five.

Your orator further shows that such proceedings have been had in said original cause that the said cause has been referred to Henry W. Bishop, Esq., master in chancery of this court, to take testimony and report the amount due under the covenants of said mortgage, and that said master has made and filed his report thereon.

Your orator further shows that in and by said mortgage it was covenanted that until the principal sum mentioned, with all arrearages of interest thereon, should be fully paid the said mortgagors would not suffer said mortgaged premises or any part thereof to be sold for any taxes or assessments whatsoever, and that in the event that your orator, its successors or assigns, should expend any money either to save said premises or any part thereof from any sale for any taxes or assessments or to redeem said premises from any such sale, then all such moneys so expended should be a new and additional principal sum of money secured by said mortgage, and should be payable and might be collectible immediately or at any
178 time thereafter, with interest thereon at the rate of ten per centum per annum from the time of so paying the same.

Your orator shows, by way of supplement, that since the filing of said original bill of complaint the mortgagors have failed and neglected to pay all of the taxes and assessments which have been levied and assessed upon said mortgaged premises, or for which judgment has been entered, or for the collection of which sales have been had since the filing of said original bill of complaint in this cause.

Your orator further shows that in consequence of such neglect said land was sold for taxes and a tax deed issued upon such sale, and that subsequent to the expiration of the time of redemption from the first sale said lands were again permitted to be sold for taxes, and that it became necessary, in order to protect the title and possession of said premises and your orator's said mortgage, that your orator should redeem from said sales and take up said tax deed; and your orator says that for that purpose and to clear said mortgaged lands from the lien of the taxes above mentioned
179 your orator did, on the thirtieth day of December, A. D. 1880, pay and expend the sum of two thousand eight hundred and twenty-five dollars and ninety-five cents ($2,825.95).

And your orator charges and insists that it is entitled to receive said last-mentioned sum of money, with interest at the rate of ten per centum per annum from said thirtieth day of December A. D. 1880, in addition to the amount already reported to be due it in and by the said master's report already on file in this cause.

Your orator therefore prays that said master's report may be ordered to be opened, and that an account may be taken of what is due and owing, in addition to the amount already set forth in said report to your orator, on account of moneys so expended by it on the thirtieth day of December, A. D. 1880, and interest thereon, and that the amount thereof may be included in the decree & be entered in said cause.

And your orator prays that said defendants be required to demur, plead, or answer to this your orator's supplemental bill as is by law required.

And your orator will ever pray, &c.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By ISHAM & LINCOLN,
Its Solicitors.

EDW'D S. ISHAM,
Of Counsel.

(Endorsed:) Filed Jan'y 3, 1881. Wm. H. Bradley, cl'k.

180 Afterwards, to wit, on the thirteenth day of January, A. D. 1881, came the complainant, by its solicitors, and filed in said clerk's office a petition in said entitled cause, which said petition is in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* JONATHAN YOUNG SCAMMON and others. } Gen. No. 13741.

To the honorable the judges of said court, in chancery sitting:

The Connecticut Mutual Life Insurance Company, the complainant in the above-entitled cause, respectfully represents and shows to the court that the premises remaining subject to the mortgage mentioned in the original and supplemental bills of complaint in said cause are the north two-thirds of lot five, in block eleven, in Fort Dearborn Addition to Chicago, and have a frontage of
181 thirty-two feet on Michigan avenue, with a depth of about one hundred and thirty feet.

That the entire frontage of the block in which said lot is situated on Michigan avenue, with the exception of the premises above described, is built up and occupied by permanent warehouses and stores; that said premises subject to said mortgage have no building upon them, no buildings having been erected thereon since the great fire of October, 1871.

Your petitioner further shows that said premises are producing

no revenue, and are subject to periodical payments of taxes, and that your orator is informed and believes that said premises could be rented and a revenue derived therefrom which would enure to the benefit and protection of said property if a receiver of said premises should be appointed and be authorized to rent the same subject to the orders of this court.

Your petitioner further shows that application has already been made to your petitioner by the firm of Reed, Murdock and Fischer, occupying an adjoining warehouse, for a lease of said premises for use in connection with their business.

182 Your petitioner further shows and represents to the court that a proper lease of said premises would be of advantage to all the parties to this cause; that this cause is a litigated cause in which there are questions of law which may prevent the litigation from ending for some years in due course.

Your petition therefore prays that a receiver of said premises may be appointed, with the usual powers given to receivers in such cases.

And your petitioner will ever pray, &c.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By ISHAM & LINCOLN, *Its Solicitors.*

(Endorsed:) Filed Jan. 13, 1881. W. H. Bradley, cl'k.

Afterwards, to wit, on the seventeenth day of January, A. D. 1881, in the December term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

In Chancery.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
183 JONATHAN YOUNG SCAMMON *et al.*

And now comes the said complainant, by Messrs. Isham and Lincoln, its solicitors, upon their motion due notice having been given and proper cause in that behalf having been shown, it is ordered that Henry P. Isham be, and he is hereby, appointed receiver of the land and premises described in the bill of complaint in this cause, known and described as follows, to wit: All that certain lot, piece, or parcel of land situate, lying, and being in the city of Chicago, in the county of Cook and State of Illinois, known and described as being the north two-thirds of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, and of the rents, issues, and profits thereof.

And it is further ordered that the tenants in possession or occupancy of said premises or any part thereof do attorn and pay their rents in arrears and rents to become due to said Henry P. Isham as such receiver, and that said receiver have power to distrain for such rents or any part thereof, and to collect the same by process of law, and to employ counsel if necessary in the premises.

184 And it is further ordered that said receiver have power to lease the said premises in such parcels to such persons and upon such terms as the court may deem for the best interest of all the parties in this cause, and that said receiver, out of the rents to be collected by him from said premises, be at liberty to pay the taxes, assessments, and water rents upon said premises, or any part thereof, as well those which have accrued as those which shall ac-rue during the term of his said receivership, and to redeem said premises or any part thereof from any sales or forfeitures for taxes thereon.

And said receiver is hereby directed to present his accounts from time to time to the court for its approval, and to pay his balances to the clerk of this court to the credit of this cause.

And it is further ordered that said receiver file herein his bond, with surety to be approved by the court, in the penal sum of one thousand dollars, conditioned upon the faithful performance of his office of receiver.

And liberty is reserved to all the parties herein to apply to the court for such other or further order in the premises as occasion may require.

185 On the same day, to wit, on the seventeenth day of January, A. D. 1881, came Florence A. D. Reed and A. E. Scammon, two of the defendants, by their solicitor, and filed in said clerk's office their answer to the supplemental bill in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
J. YOUNG SCAMMON, FLORENCE A. D. REED, ARIANNA E. SCAMMON, *et al.*

The answer of Florence A. D. Reed and Arianna E. Scammon, two of the defendants, to the supplemental bill of complaint of The Connecticut Mutual Life Insurance Company, complainant.

These defendants, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors, uncertainties, and other imperfections in the said supplemental bill
186 contained, for answer thereto, or to so much and such parts thereof as these defendants are advised is or are material for them to make answer unto, answering, say:

These defendants have no knowledge or information, save as derived from complainant's supplemental bill, as to what sum, if any, the said complainant has paid to take up or relieve said mortgaged premises from taxes or tax claims, or whether, if said complainant has paid any sum whatever, said sum is correctly stated in said

supplemental bill; but these *complainants* allege that said alleged sum is largely in access of the taxes levied and assessed on said premises for the period in said supplemental bill specified, and largely in excess of what said taxes, with proper interest, would amount to at the date of said alleged payment; and these defendants deny that if said complainant did pay the amount in said supplemental bill alleged, that said amount is a proper charge against these defendants or their interest in said mortgaged premises.

These defendants state that they are the owners of the fee of said mortgaged premises, and that the defendant, J. Young Scam-
187 mon, is the owner of the life estate therein; and that they had the same interest therein at the time said taxes were levied and assessed against said premises; and these defendants claim and will insist that said taxes should be paid by said J. Young Scammon, the owner of said life estate, or be held as a charge against his interest to the extent and value of said interest.

And the defendants deny that the complainant is entitled to the relief or any part thereof in said supplemental bill prayed for, and pray the same benefit of this answer as if they had plead or demurred to said bill, and pray to be hence dismissed, with their reasonable costs, etc.

FLORENCE A. D. REED AND
ARIANNA E. SCAMMON,
By CHAS. F. WHITE,
Their Solicitor.

CHARLES F. WHITE,
Solicitor for Defendants.

(Endorsed:) Filed Jan. 17, 1881. W. H. Bradley, cl'k.

188 Afterwards, to wit, on the seventh day of February, A. D. 1881, came the complainant, by its solicitors, and filed in said clerk's office its replication to the answer of A. E. Scammon and F. A. D. Reed to the supplemental bill in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery. Gen. No. 13741. Term No. 206.

The replication of The Connecticut Mutual Life Insurance Company, complainant, to the joint and several answer of Arianna E. Scammon and Florence A. D. Reed to the supplemental bill of said complainant.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that it does and will aver, maintain, and prove said bill to be true, certain, and sufficient

in the law to be answered unto by the said defendants, and
189 that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainant.

(Endorsed:) Filed this 7th day of February, 1881. W. H. Bradley, clerk.

190 Afterwards, to wit, on the eighth day of February, A. D. 1881, in the December term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee; Charles Comstock, First National Bank of Macomb, Illinois, Hiram Wilson, The Ridgley National Bank, Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball, The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank of Chicago, Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews, The United States Mortgage Company, William H. Stevens, Henry Bromley, William D. Dillard, The Manufacturers' National Bank of Racine, Alexander
191 M. Byers, William McCullough, Ebenezer M. Byers, George Scoville, Albinus B. Wood.

And now comes the complainant, by Messrs. Isham and Lincoln, its solicitors, and it appearing to the court that on the third day of January, A. D. 1881, the complainant in this cause, by leave of court first had in that behalf, upon proper cause shown and due notice to all the defendants in this cause, in accordance with the fifty-seventh equity rule of the Supreme Court of the United States, filed in this cause its supplemental bill; and it further appearing to the court that all the defendants in this cause, except the said defendants Florence A. D. Reed and Arianna E. Scammon, have each and all failed to demur, plead, or answer to said supplemental bill on or before the rule day of this court, on the first Monday of February,

A. D. 1881, being the rule day next succeeding the date of the filing of said supplemental bill, and all of the defendants in this cause above named, except the said defendants Florence A. D. Reed and Arianna E. Scammon, being now severally and solemnly three times called in open court to come and demur, plead or answer to
192 the complainant's said supplemental bill, come not, but each and all make default in that behalf: It is therefore ordered that as to all the defendants in this cause, except the said defendants Florence A. D. Reed and Arianna E. Scammon, the said complainant's said supplemental bill and the matters and things therein charged be, and the same are hereby, taken as confessed.

And the court having considered the master's report filed in this cause on the twenty-third day of March, A. D. 1880, and the exceptions thereto taken by the defendants, Florence A. D. Reed and Arianna E. Scammon, and being now fully advised in the premises, doth order that this cause be again referred to Henry W. Bishop, Esq., master in chancery of this court, with directions to said master to restate the account between the parties according to the principles laid down in the opinion of the court filed in this cause upon the hearing of said exceptions.

And it is further ordered that said master take evidence upon the matters set forth in the complainant's said supplemental bill of complaint filed in this cause, and that said master consider and
193 include the said evidence and his findings in his report to be made in pursuance of this order.

Afterwards, to wit, on the first day of November, in the adjourned October term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON *et al.*

On motion of complainant's solicitors, time to close proofs herein is extended to the tenth day of November instant.

Afterwards, to wit, on the second day of November, A. D. 1881, there was filed in said clerk's office an opinion of Judge Dyer in said entitled cause, which said opinion is in the words and figures following, to wit:

194 *Opinion of Judge Dyer.*

United States Circuit Court, Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INS. CO.
vs.
JONATHAN Y. SCAMMON, FLORENCE A. D. REED, & ARIANNA E. SCAMMON *et al.*

Isham & Lincoln, solicitors for compl't.

Mr. C. F. White, sol'r for def'ts, Florence A. D. Reed and Arianna E. Scammon.

DYER, J.:

This is a bill for foreclosure of a mortgage executed to complainant in 1866 by the defendants, J. Y. Scammon, Florence A. D. Reed, formerly Scammon, and Arianna E. Scammon, the two defendants last named being daughters of the defendant, J. Y. Scammon. The mortgage originally covered lot No. 5, in block No. 11, in Fort Dearborn Addition to Chicago, and was made to secure the payment of $30,000 and interest. It is admitted in the bill that in 1867 the sum of $10,000 was paid to apply on the principle, and it is alleged that the balance of the original principal, namely,
195 $20,000, with interest, remains unpaid, besides certain sums of money paid by complainant to redeem the mortgaged premises from tax sales. Defences have been interposed by the defendants, Florence A. D. Reed and Arianna E. Scammon, and the case has been heard upon these exceptions to the report of the master to whom the cause was referred. Originally the mortgaged premises were owned in her seperate right by Mary Ann H. D. Scammon, then the wife of the defendant, J. Y. Scammon, but since deceased. Upon her death the property by descent passed to her three children, Charles T. Scammon and the defendants, Florence A. D. Reed and Arianna E. Scammon, subject, however, to a life estate therein of their father. Subsequently, but prior to the execution of the mortgage in suit, Mr. Scammon acquired the interest of his son, Charles T. Scammon, so that at the date of the mortgage he was the owner in fee of an undivided one-third interest in the premises. This being the state of the title on the 10th day of September, 1866, Mr. Scammon and his two daughters joined in the execution of a bond to the complainant, conditioned for the payment of the sum of
196 $30,000 on the 10th day of September, 1871, with interest payable half yearly at 8 per cent., and to secure the payment of this bond they executed the mortgage in question.

This bond and mortgage were given to secure the repayment to complainant of a loan then made for the purpose of erecting a building on the premises, and the money thus borrowed and secured was so used. The mortgage contained a clause binding the mortgagers to keep the buildings thereafter erected on the premises insured against loss or damage by fire, and to assign and deliver to complainant the policies of insurance therefor whenever such insurance should be effected; and it was further provided that the complain-

ants should hold such policies of insurance as collateral and additional security for the payment of the principal sum secured by the mortgage and interest, and should have the right to collect and receive all sums of money that might at any time become collectable upon such policies of insurance and apply the same when received in the same manner, as far as possible, as was provided in the mortgage in case of a sale of the mortgaged premises under the
197 power of sale therein contained. Pursuant to these requirements of the mortgage insurance was obtained in the sum of $15,000 upon the building erected on the premises. The policy of insurance in terms run to J. Y. Scammon alone, and contained a clause in the usual form, "loss, if any, payable to the Connecticut Mutual Life Insurance Co." On the 10th day of September, 1867, by agreement between J. Y. Scammon and his daughters, a partition of the mortgaged premises was made by which the south one-third thereof was set off to Mr. Scammon as the parcel in which he should thereafter have a clear estate in fee, and the north two-thirds were set off to the defendants, Florence A. D. Reed and Arianna E. Scammon, to be held by them in fee, subject, however, to the life estate of their father. The object of this agreement of partition appears to have been to enable Mr. Scammon to convey the south one-third of the lot to the Marine Co. of Chicago, and to enable his daughters at his death to hold the north two-thirds of the lot free from all other claims of title under Mr. Scammon. Concurrently with the making of this partition ten thousand dollars was
198 paid to complainant to apply on the principal of the bond and mortgage in suit, and the south one-third of the mortgaged premises so set off to Mr. Scammon was then released by complainant from the lien of the mortgage, and thereafter his interest in the premises yet covered by the mortgage consisted of a life estate; and it is understood that the building then situated on the premises stood upon that part of the same set off under the partition to Mr. Scammon's two daughters. This building was totally destroyed in the great fire of October, 1871. In settlement of the insurance on the same the Fire Insurance Company delivered to the defendant Scammon a draft for $15,000, payable to the order of the complainant; and thereupon Scammon, in a communication addressed to the secretary of the complainant, informed him that he had commenced rebuilding the burned structures, and enclosed therein the draft received for insurance, and requested that authority might be given to complainant's Chicago agent to pay over to him (Scammon) or to the Marine Co. the proceeds of the draft to be expended in such rebuilding.

199 This request resulted in an agreement made on the 5th day of Jan., 1872, between complainant and J. Y. Scammon alone, by which it was agreed that complainant should, and did waive its right to apply the insurance on the mortgage indebtedness, and that this money should be deposited in such bank as should be selected by Scammon, and assented to by complainant, to the credit and at the risk of Scammon, to be used in the erection of buildings on the mortgaged premises; that this money should be paid out in

the erection of such buildings, from time to time, on the drafts or checks of Scammon, countersigned by complainant's agent, until it should be fully expended; further, that such drafts or checks should be so countersigned on presentation thereof to complainant's agent, accompanied with the certificate of an architect that the amount of such check or draft, together with all previous checks or drafts drawn or paid out on such account, had been actually expended in permanent improvements upon the mortgaged premises; further, that so soon as the building or buildings so erected should be in a situation to be insured Scammon should cause the same to be
200 insured in the fair insurable value thereof, and assign the policies of insurance to complainant.

And that thereupon all the provisions contained in the mortgage should apply to such insurance. By this agreement it was further provided that any receipt or acknowledgment given by complainant, either alone or jointly with others, to any such insurance company, for the purpose of facilitating the collection by Scammon of any insurance money intended to be placed back on the mortgaged premises, should not be construed as a collection of the money by complainant under the conditions of the mortgage, wherein it was provided that complainant might collect and apply such insurance money upon the indebtedness secured to be paid thereby, but should be regarded as merely enabling Scammon to collect such insurance money; and it was expressly provided that this money was not to be so applied, and that the mortgage should remain a lien on the premises for the full amount of the principal sum mentioned in the bond, with interest, as if said insurance money had never been collected. It was also agreed that in case the insurance money should not be expended in rebuilding within six months from
201 the date of the agreement, then said agreement of waiver should have no effect, but that the right of Scammon to use and expend the same should thereupon cease; and that complainant should have the right to draw from the bank where the same was deposited, upon its own check, said insurance money, or so much thereof as had not then been actually expended, and apply the same in payment *pro tanto* of the indebtedness secured by the mortgage. Thereupon complainant, by its secretary, by indorsement on the draft for $15,000 received from the Fire Insurance Company, made the same payable to J. Y. Scammon or order, who designated the Marine Co. of Chicago as the banking office in which the insurance money should be deposited, and delivered the same back to Scammon so indorsed, and the proceeds of the draft were then received by Scammon and deposited with the Marine Co. Thereafter the money thus realized on account of the insurance, and so deposited, was drawn out by the defendant Scammon on his own checks or drafts, and not in pursuance of the aforesaid agreement between him and complainant; but new structures were not erected on the
202 mortgaged premises, and the proceeds of the insurance were not used by Scammon for the purpose as contemplated by the agreement.

Further material facts in the case are that when complainant

originally took the mortgage in question it, by its agent, knew the state of the title of the mortgaged premises; that in the erection of the buildings on the premises, in causing it to be insured, and in collecting rents and paying premiums and taxes, the defendant, J. Y. Scammon, de-lt with the property as if it were his own, and that the entire business connected with the loan from complainant, from the time of its original negotiation down to the time of the beforementioned agreement in relation to the insurance, was transacted by the defendant Scammon. The evidence tends to show that he kept an account with the property on his bank ledger, in which rents received by him were credited; and that either in this or in a separate account moneys paid by him for insurance premiums were also entered. It appears further that the defendants, Florence A. D. Reed and Arianna E. Scammon, knew nothing at the time
203 of the insurance obtained upon the property, nor of the agreement in relation to the insurance money between their father and complainant made in 1872. There is no doubt that when complainant consented to the payment of the insurance money to Scammon it was expected that it would be used in rebuilding, and that it was paid to and received by him in good faith for that purpose; and there is evidence to the effect that the officers of the bank understood at the time that this money was placed in the bank in the character of a special deposit and subject to the conditions of the agreement between complainant and Scammon. Further, it seems clear that Scammon was never expressly authorized by complainant to draw out or appropriate the money as he seems to have done. Indeed, the performance of the agreement under which the insurance money was surrendered to Scammon and deposited in the bank seems to have been abandoned by both parties thereto, as it does not appear that the contract was at all regarded by Scammon in the appropriation of the money, nor was it insisted upon by complainant, so far as the evidence disclose-. The two mortgagors,
204 Florence A. D. Reed and Arianna E. Scammon, according to the evidence, were not consulted about the disposition of the insurance money, and, so far as is shown, had no knowledge of and gave no consent to its payment to their father or to its deposit in the bank, nor have they ever asserted any rights in relation thereto until the commencement of this suit.

Upon the case stated it is insisted by the defendants, who contest complainant's right to a decree, that the insurance money in question was in legal effect collected by complainant and, in fact, came to its hands; that complainant had no authority to surrender the same to the defendant, J. Y. Scammon; that its receipt by complainant constituted satisfaction *pro tanto* of the mortgage; that the covenant in the mortgage for insurance operate- as an assignment of the insurance fund, when collected, to the mortgagee, and that it could not, under any arrangement made with J. Y. Scammon without their consent, be legally paid back to him and the mortgage be still kept in force, to their prejudice, and as a continuing or renewed incumbrance upon their interest.

On the other hand, it is contended that the defendant, J. Y.

205 Scammon, had an insurable interest in the mortgaged premises; that all of the mortgagors agreed in this mortgage to furnish insurance to the full value of their insurable interests; that the two defendants who make defense procured no insurance on the property or their interest therein; that the policy of insurance run to J. Y. Scammon alone, and, therefore, that he could recover upon the policy, no matter what his interest in the property was; that his daughters had no interest in the proceeds of the insurance; that the policy was held by complainant as collateral security; that it could elect, if it chose, not to collect the insurance, and, if collected, it could rightfully pay the money back to the party insured; that the daughters had no interest or concern in the transaction, and that the insurance which was obtained only in legal effect covered the interest of J. Y. Scammon in the property.

In reply, it was urged that the insurance was procured as additional security to the mortgage; that though it was taken in the individual name of J. Y. Scammon, it was furnished under the covenants of the mortgage, and that it did not inure to the
206 benefit of J. Y. Scammon alone, but was treated by all the parties as, and was, in fact, a proceeding for the benefit of all, and which protected the interests of all.

Upon complainant's theory thereof the $15,000 received on account of the insurance is not to be treated as a payment upon the mortgage, or as money received by complainant which it was bound to apply upon the mortgage; while on the theory of the contesting defendants that money should have been applied in payment of the mortgage indebtedness, and its receipt by complainant operated as a satisfaction *pro tanto* of the mortgage, so far as the interests of these defendants were involved, and so left unpaid only the sum of $5,000 and interest.

Upon the assumption that the policy of insurance covered not only the interest of J. Y. Scammon in the insured property, but also that of his daughters, it becomes important first to enquire whether, in making the agreement with complainant by which the insurance money was surrendered to Scammon, he acted not only for himself, but also as the authorized representative of his daughters, because if, in that transaction, he was their authorized agent, it is obvious they could have no ground of complaint, and that would
207 end this controversy. Manifestly he stood in a twofold relation to the property; first, as the owner of the life estate, and, secondly, as the representative to a certain extent of the owners of the reversion. The individual acts of Mrs. Reed and Arianna Scammon in connection with the property, done at the time of and subsequent to the original loan, appear to have been limited to the execution of the bond and mortgage in suit and the making of the agreement of partition with their father.

It must be assumed that he was left with unrestricted authority to manage the property to the extent of erecting buildings thereon, collecting rents, paying taxes, and procuring insurance. So far as those acts affected the interests of the owners of the fee, they must be considered as done under authority, express or implied. More-

over as to some, if not all, of such acts, he had not only the legal right, but as the owner of the life estate, receiving the rents and profits, it was his legal duty to do them. As the mortgage contained a covenant to keep the buildings insured, and as the care and
208 management of the property were entrusted wholly to Mr. Scammon, it is clear that his act of procuring insurance as additional security to the mortgage was within the scope of his agency as the representative of the interest of his daughters. It was a legitimate incident to the business of managing and preserving the property. But it is not to be overlooked that this and the other acts before specified were such as touched the property in its character as real estate, and the question is, Could authority to make the special agreement in relation to the insurance money, so far as it affected the interests of his daughters, be implied from the general power he possessed and exercised over the property? I am of opinion it could not. In support of this conclusion it is to be borne in mind that the instrument which required insurance to be obtained, and which in its provisions controlled the destiny of the insurance money, was executed not by Mr. Scammon, for and as the agent of his daughters, but by those persons acting for themselves. The covenants and stipulations of the mortgage were made effective by their own signatures and seals. The origin of the obligations and rights of all the parties, with reference to insurance and
209 any moneys derived therefrom, was the mortgage; and direction having been therein given as to the ultimate disposition of the same, so serious a departure therefrom as a waiver of valuable rights and a diversion of the fund would involve would require the sanction of the owners of the fee so far as their interests were concerned. The waiver of rights established by the mortgage, the virtual revocation of special contract provisions, involved an extraordinary power not falling within such general control over the property as the owners of the life estate was accustomed to exercise. It was outside the scope of his agency and not properly incident to any general powers pertaining thereto. Consent on the part of the owners of the fee to any diversion of the insurance moneys cannot be inferred from their silence, because they had no knowledge of the transaction.

It will be understood that all this is said upon the theory that the contesting defendants had an interest in the insurance, and in such application of the insurance fund as the mortgage contemplated.

And it is also said, in the light of the fact, that that fund was allowed to be personally appropriated by the owner of the
210 life estate, and was not used in rebuilding.

How far the equities of the parties might have been affected, if the moneys had been used in rebuilding, and whether that might not have been regarded as a restoration of the lost property, and, therefore, a benefit to the parties interested equivalent to an application of the moneys on the mortgage debt, are questions not necessary here to be considered. The facts, as we now have them, are that this agreement was made; that the owners of the fee were not

parties to it and never authorized it; that that agreement, even in the form in which it was made, was not performed; that performance was not required by complainant; and that the insurance moneys were ultimately diverted so that they neither benefitted the mortgaged property nor were applied upon the mortgage debt.

The more difficult question is, Had the owners of the fee any such interest in this insurance, or any such rights in the ultimate disposition of it, as enable them to question the transaction in relation thereto between their father and complainant?

The proposition that the insurance only covered the inter-
211 est of Mr. Scammon in the property was urged with so much force on the argument that I have not been without doubt in considering the question. Undoubtedly, as life tenant, he had an insurable interest in the property, and when the language of the policy, which is that the Insurance Company "do hereby insure J. Young Scammon * * * against loss or damage by fire to the amount of $15,000 * * * on the four-story and basement brick building, &c.," is considered, disconnected from other extrinsic facts, there is certainly force in the view that his interest only was insured. But it is to be borne in mind that the interest of all the mortgagors in the mortgaged property, in common and without severance, was pledged for payment of the debt. Further, that the mortgaged covenanted generally for insurance, and that it did not specify the several interests of the covenantors. The building was part of the realty and the interests were undivided. They were de-lt with as a unit. The obligation was not in terms that each mortgagor should cause his and her interest to be severally insured for the benefit of the mortgagee. Further, as before indicated, it was the legal
212 duty of the defendant Scammon, as the life tenant receiving the rents and profits, to keep the buildings as an entirety insured, and in procuring insurance he must be held, as it seems to me, the agent of his daughters, so far as their interests were involved; and when we consider the terms of the policy of insurance, as it is right to do in connection with the covenants and stipulations in the mortgage and the relations at the time of all the parties to each other, the conclusion must be, I think, that this insurance was obtained in pursuance of the requirements of the mortgage, and under the circumstances the presumption is that it covered what the mortgage specified, namely, the fair insurable value of the building as an entirety, and in which were united the undivided interests of all the mortgagors. The view thus taken is strongly confirmed by the manner in which the insurance proceeds were de-lt with by complainant. The loss was payable by the terms of the policy to the mortgagee. The draft of the Fire Insurance Company was
213 payable to the mortgagee's order. I- was evidently received *as* treated as a fund to be either applied on the debt or to be used in restoring the original security. The acts of complainant were equivalent to a collection of the insurance, for it had the draft in hand, indorsed it to Mr. Scammon by ordinary commercial endorsement, and assumed to control the ultimate destiny and use of the proceeds. If the money was to be relinquished and not to be

appl-ed on the mortgage debt, it is clear that complainant understood that the legal rights of the parties required that it be placed back on the mortgaged premises, and hence the stringent provisions to that end in the agreement of Jan., 1872; and it was, of course, understood that the restoration of the buildings on the premises would enure as well to the benefit of the owners of the fee as to that of the owner of the life estate. So I say, complainant de-lt with the insurance not as Mr. Scammon's money, but as a further security furnished under the mortgage, and as something which affected the rights of all the mortgagors in the property and in which all were interested.

214 If this be the correct view of this question, the remaining question, which relates purely to the rights of the parties, would seem not to be difficult of solution. The provisions of the policy, that the loss should be payable to the mortgagee, operates to give the mortgagee precisely the same rights and interest in the policy which it would have had if, without such words, the policy had been assigned as collateral security to the mortgage debt. 1 Jones on Mortgages, §407, and cases cited. The proceeds of the insurance in the hands of complainant represented the insured property and the interest of all the mortgagors therein.

The control exercised over the same by the mortgagee was equivalent to an election by it under the provisions of the mortgage to collect and receive the money. This being so, it was complainant's duty to use and apply it in accordance with the spirit of the provisions of the mortgage, and for the benefit of the parties beneficially interested, unless they consented to some other disposition of it.

Indeed, it is difficult to perceive why, upon general principles of equity, so far as the rights of the owners of the reversion were
215 concerned, complainant could not have been required to have had recourse to the insurance money as collateral security for payment *pro tanto* of the mortgage.

If in any view of the equities of the case complainant might, without the knowledge of the owners of the fee, agree with the life tenant to place the money back on the mortgaged premises, it was bound to see that such agreement was carried out and that the money was so used. Failing in this, and having as mortgagee received and undertaken to deal with the insurance proceeds as a fund representing the property, equity will consider that as done which ought to have been done, and must therefore, so far as the interest of the non-consenting mortgagors are concerned, charge complainant with this fund and treat it as operative to satisfy the mortgage *pro tanto*.

The case at bar is distinguishable from Gordon *v.* Wave Savings Bank, 115 Mass., 588, which was cited by the learned counsel for complainant on the argument. That was a case where mortgaged premises were injured by fire, and the amount of the loss was paid by the insurer, in pursuance of its agreement with the mort-
216 gagor, to the first mortgagee, who subsequently paid the amount to the mortgagor to be applied in repairing the premises, so as to make them as valuable as before the fire; and in this case it was held, under the facts, that the holder of a second

mortgage had no equity to have the amount so received applied in reduction of the debt secured by the first mortgage. The facts were that at the time the first mortgagee received the insurance money the mortgage debt was not due, and *and* the mortgagor did not consent to the application of the money on the mortgage, and moreover, and as a controlling feature of the transaction, the money was applied by the mortgagor to the restoration of the unpaid security for the benefit alike of all parties interested. These circumstances, of course, vitally affect the equities of the second mortgagee.

The point was made on the argument that the insurance mon-y could not be applied on the mortgage debt without reducing the liability of the defendant, Scammon, equally with that of his co-obligors on the bond, which would be manifestly wrong, and the question was put, Where can the line be drawn in the
217 proposed application of this money in reduction of a liability which is joint and which is secured by the pledge of interests that are undivided? The answer is, That the rules of equity practice are sufficiently flexible to meet the case.

The life estate may be charged with the same burden of liability as it was originally chargeable with, added to which is the personal liability of the defendant, Scammon, and the estate of the answers of the fee may be charged with its proper proportion of liability, namely, with $5,000 and interest. The decree can provide for a sale of the life estate as a security for the debt unaffected by anything that has transpired between its owner and complainant, and suitable provision can be made touching the personal liability of the defendant, Scammon, for any deficiency. Further, the same decree can direct a sale of the interest of the other mortgagors to pay so much of the debt as is in excess of the fifteen thousand dollars realized from the insurance.

To the extent indicated the exceptions to the master's report will be sustained, and decree in conformity to this opinion.

Endorsed: Filed Nov. 2, 1881. Wm. H. Bradley, clerk.

218 Afterwards, to wit, on the second day of December, A. D. 1881, came Henry W. Bishop, master in chancery, and filed in said clerk's office his report in said entitled cause, which said report, together with the testimony thereto attached, is in the words and figures following, to wit:

219 *Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
JONATHAN YOUNG SCAMMON, FLORENCE A. D. REED, ARIANNA E. SCAMMON, and others. } 13741.

To the honorable the judges of the said court:

The above-entitled cause having been by an order entered therein on the eighth day of May, A. D. 177, referred to me, as master in

chancery, and in accordance with said order, I, as such master, having on the 23rd day of March, A. D. 1880, filed in said cause my report therein, and said cause having been by an order entered therein on the 8th day of February, A. D. 1881, again referred to me, as such master in chancery, with direction to restate the account between the parties to said cause, in accordance with the principles laid down in the opinion of the court filed in said cause, and
220 also to take evidence upon the matters stated in the supplemental bill of complaint filed in said cause, and to report my findings thereon—

I do hereby report that, having notified the parties interested of a hearing before me, at my office, number 34 United States Government Building, Chicago, for the purpose in said order expressed, I was attended on the third day of November, A. D. 1881, by William Burry, Esquire, of counsel for complainant, and by Charles F. White, Esquire, for the defendants Florence A. D. Reed and Arianna E. Scammon, and also by David G. Hamilton, who testified therein, and whose testimony was duly taken down, is hereto annexed, and made a part hereof.

I further report that from an examination of the original bill of complaint, the supplemental bill of complaint, the answers and the replications thereto, and from the evidence taken before me on the former reference of said cause, which evidence, with the exhibits thereto, is attached to my report filed in said cause on the twenty-third day of March, A. D. 1880, and from the evidence of David G. Hamilton, and from a computation made by me, I find that there is due and owing to the said complainant on the bond
221 secured by the mortgage described in the said bill of complaint, the sum of twenty thousand dollars for the principal, and the sum of thirteen thousand and ninety-three dollars and thirty-two cents for interest thereon to the sixteenth day of November, A. D. 1881, the date of this report, making a total of thirty-three thousand and ninety-three dollars and thirty-two cents, and that Jonathan Young Scammon, one of the defendants in said cause, is personally liable therefor, and that said sum is a lien upon the interest of Jonathan Young Scammon in the north two-thirds of lot five, in block eleven, in Fort Dearborn Addition to Chicago.

I further find and report that of the said indebtedness of thirty-three thousand and ninety-three dollars and thirty-two cents so due upon said bond secured by said mortgage the said defendants, Florence A. D. Reed and Arianna E. Scammon, are personally liable for the sum of five thousand dollars for principal and the sum of thirty-two hundred and seventy-three dollars and thirty-three cents for interest thereon to the sixteenth day of November, A. D. 1881, being the date of this report, making a total of eight thou-
222 sand two hundred and seventy-three dollars and thirty-three cents, and that said sum of eight thousand two hundred and seventy-three dollars and thirty-three cents is a lien upon the interest of said defendants, Florence A. D. Reed and Arianna E. Scammon, in said north two-thirds of lot five, in block eleven, in Fort Dearborn Addition to Chicago.

I further find and report that said Jonathan Young Scammon is seized of and entitled to an estate for the term of his own life in said north two-thirds of lot five, in block eleven, in Fort Dearborn Addition to Chicago, and that said Florence A. D. Reed and Arianna E. Scammon are entitled to the reversion thereof in fee simple absolute at the expiration of the said life estate of said Jonathan Young Scammon.

I further find and report that there is due and owing to the said complainant for payments shown to have been made on behalf of said complainant for taxes and assessments and for redeeming from sales which had been made of the above-mentioned premises for due and unpaid taxes the sum of thirty-two hundred and
223 seventy-five dollars and forty-two cents, and for interest thereon to the sixteenth day of November, 1881, the sum of four hundred and ninety dollars and seventy-three cents, making a total of thirty-seven hundred and sixty-six dollars and fifteen cents.

The entire amount so found to be due and owing to the said complainant for principal, payments for taxes and assessments, and for redemption from tax sales, and interest on each to the sixteenth day of November, A. D. 1881, the date of this report on said bond secured by said mortgage, and the covenants therein contained, is the sum of thirty-six thousand eight hundred and fifty-nine dollars and forty-seven cents.

I return all the documents used by me in preparing this report, and make the same a part hereof.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, November 16th, 1881.

224 *Testimony taken before Henry W. Bishop, Master in Chancery of said Court, Thursday, the 3rd day of November, A. D.* 1881.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE CONN. MUT. LIFE INS. CO., Complainant,
vs.
J. Y. SCAMMON *et al.*, Defendants.

Present: Mr. Burry, for compl't; Mr. White, for def'ts.

DAVID G. HAMILTON, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. BURRY, and deposes and says as follows:

Int. 1. Please state your name, residence, and occupation.

A. My name is David G. Hamilton; I reside in the city of Chicago; my occupation is that of an investor in taxes at tax sales.

Q. Do you know the premises described in this bill, being the

north two-thirds of lot 5, in block 11, in Fort Dearborn Addition to Chicago?

A. I do.

Q. Did you ever buy this property for taxes?

225 A. Yes, sir.

Q. Please state any purchases you may have made of this property for taxes, and any subsequent payment of taxes made by you in connection with such tax sales.

A. I purchased the same on the 30th day of September, 1876, for the State, county, and city taxes of 1875, and possibly previous years, paying therefor the sum of $506.20. I paid on September 13th, 1877, to protect said sale, the taxes of 1876, amounting to $312.21. I also paid—I don't know the date—the fourth installment of South Park assessment, $2.45. On August 11th, 1877, I paid the 5th installment, $2.55. On the 23rd day of August, 1877, I paid special assessment No. 2418, $30.92. On the 26th day of August, 1878, I paid the sixth installment of South Park assessment, $2.66. I made all these payments to protect the purchase above specified of September 30th, 1876. On the 25th of September, 1879, I also purchased said premises at tax sale for the taxes of 1878, and possibly previous years, for the sum of $940.92. On the 15th of September, 1879, I paid the seventh installment of South Park assessment, $2.94. In October, 1880, I paid taxes for 1879, and special assessments, amounting to $442.10.

226 Q. Mr. Hamilton, did any person ever apply to you to redeem this property from these tax sales and tax payments that you have just testified to?

A. Yes, sir.

Q. When?

A. December 30th, 1880.

Q. Who applied to make such redemption?

A. The Connecticut Mutual Life Insurance Company.

Q. Did they redeem these premises from these tax sales and payments that you have testified to from you at that date?

A. Yes, sir.

Q. At the time they had these negotiations with you was it standing on tax sale or had it proceeded to a deed?

A. The sale of 1876 had proceeded to a deed, which had been issued to me; the sale of 1879 was outstanding in the nature of a certificate.

Q. What was the result of these negotiations?

A. I quitclaimed to the Connecticut Mutual Life Insurance Company all the interest I had acquired under the tax sales, and delivered the certificate of purchase of the 1879 sale.

Q. What did they pay you for this deed and all the tax certificates in gross?

A. $2,825.95.

Q. On what day was that payment made?

A. The 30th of December, 1880.

Q. How did you arrive at that amount; what items does it consist of?

227 A. The taxes that I had purchased and paid, as I have heretofore testified, together with ten per cent. interest thereon from the date of purchase or payment until the 30th day of December, 1880, five per cent. commissions to myself on amount of sales, and 2½ per cent. commission for myself on payments made, amounting to $92.24 cash; I had paid to county clerk for certificate to deed, $1.20; amount I paid for recording tax deed, $1.15; for serving notices and expenses of deed, $8.06; my own services in procuring tax deed and making quitclaims, $20.00; for cancellation fees, $1.35; making a total of $2,825.95.

Q. At the time you made this settlement in regard to these taxes with the Connecticut Mutual Life Insurance Company you say you had a deed for these premises, do you not?

A. Yes, sir.

Q. In whose name has that deed been taken?

A. In my name.

Q. Give the date of that deed.

A. September 27th, 1879.

Q. Are you conversant with the general charges made by tax agents in this city for purchasing, paying taxes, and so on.

A. Yes, sir.

228 Q. Are all the charges you have testified to as being made by you for serving notices and for your services reasonable if you had only been a tax agent of the Connecticut Mutual Life Insurance Company in this matter?

A. Yes, sir.

DAVID G. HAMILTON.

Subscribed and sworn to before me—

H. W. BISHOP,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Endorsed: Filed Dec'r 2d, 1881. Wm. H. Bradley, clerk.

Afterwards, to wit, on the second day of October, in the adjourned October term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

229 Present: Hon. Thomas Drummond, circuit judge.

The following decree is entered by direction of Hon. Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin:

Decree.

In Chancery.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs.

JONATHAN YOUNG SCAMMON, MARIA S. SCAMMON, FLORENCE A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, Assignee; Charles Comstock, First National Bank of Macomb, Illinois, Hiram Wilson, The

Ridgley National Bank, Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball, The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank of Chicago, Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews, The United States Mortgage Company, William H. Stevens, Henry Bromley, William D. Dillard, The Manufacturers' National Bank of Racine, Alexander M. Byers, William McCullough, Ebenezer M. Byers, George Scoville, and Albinus B. Wood.

This cause having been heretofore heard upon the amended bill of complaint filed herein, taken as confessed by all the defendants except Florence A. D. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews,
230 and Emma Andrews; and upon the answers of said last-named defendants, and the replications thereto, and upon the supplemental bill of complaint filed herein, taken as confessed by all the defendants thereto, except Florence A. D. Reed and Arianna E. Scammon, and upon the answers of Florence A. D. Reed and Arianna E. Scammon to said supplemental bill, and the replications thereto; and upon the report of Henry W. Bishop, Esq., master in chancery of this court, and the proofs therein mentioned, which report bears date the sixteenth day of November, A. D. 1881, and was made in pursuance of orders of this court heretofore made in this cause, referring it to the said master to take the proofs in this cause and to compute the amount due to the complainant upon the bond and the mortgage, and the covenants therein contained, mentioned and set forth in said bill of complaint, and which report was filed herein on the second day of December, A. D. 1881;

And the court having considered said report, no cause to the contrary having been shown, it is ordered, adjudged, and decreed, and this court, by virtue of the authority in it vested, doth order, adjudge, and decree, that the said report and all things therein contained do stand ratified and confirmed.

And the court finds that there is due to the complainant, The Connecticut Mutual Life Insurance Company, for interest accrued since the date of said report upon the bond thereto attached, the sum of fourteen hundred and four dollars and forty-four cents, and for interest accrued since the date of said report upon the moneys paid for taxes and to redeem from tax sales under the covenants of said mortgage the sum of two hundred and eighty-seven dollars
231 and fifty-one cents.

And the court further finds that on the tenth day of September, A. D. 1866, the defendant, Jonathan Young Scammon, and his daughters, the defendants, Florence A. D. Reed and Arianna E. Scammon, joined in the execution of a bond to the complainant, conditioned for the payment of the principal sum of thirty thousand dollars on the tenth day of September, A. D. 1871, with interest thereon, payable half yearly, at the rate of eight per centum per annum, and, to secure the payment of which principal sum, they

executed the mortgage mentioned in complainant's bill of complaint and attached as an exhibit to the said master's report; that said bond and mortgage was given to secure the repayment to the complainant of a loan then made for the purpose of erecting a building on the premises in said mortgage mentioned, and the money thus borrowed and secured was so used.

That, at the time of the execution of said mortgage, the said defendant, Jonathan Young Scammon, was the owner in fee of an undivided one-third of said mortgaged premises, and also of an estate for the term of his own life in the remaining two-thirds of said premises, and his daughters, the said defendants, Florence A. D. Reed and Arianna E. Scammon, were each the owners of an undivided one-third of said premises, subject to said life estate of their father, said Jonathan Young Scammon.

That on the tenth of September, A. D. 1867, by agreement between said Jonathan Young Scammon and his said daughters, Florence A. D. Reed and Arianna E. Scammon, a partition of said mortgaged premises was made by which the south one-third of said lot was set off to said Jonathan Young Scammon as the par-
232 cel in which he should thereafter have an estate in fee, and the north two-thirds of said mortgaged premises were set off to the said defendants Florence, A. D. Reed and Arianna E. Scammon, to be held by them in fee simple as tenants in common, subject, however, to the life estate of said Jonathan Young Scammon therein; that concurrently with the making of this partition ten thousand dollars was paid to complainant to apply on the principal of the bond and mortgage mentioned in complainant's bill, and the said south one-third of the mortgaged premises so set off to the said defendant, Jonathan Young Scammon, was then released by complainant from the lien of said mortgage, and that thereafter said defendant, Jonathan Young Scammon, was seized of and entitled to an estate for the term of his own life in part of the lands and premises in said bill of complaint described, namely, in the north two-thirds of lot number five (5), in block number (11), in Fort Dearborn Addition to Chicago, and that said Florence A. D. Reed and Arianna E. Scammon were at said time entitled to the reversion thereof in fee simple absolute after the expiration of said life estate of Jonathan Young Scamman.

And the court further finds that a part of said premises was subsequently, as is claimed by said Martin Andrews, Caroline Andrews, Phœbe D. Andrews, Abner L. Andrews, and Emma Andrews, in their answer in this cause, conveyed by said Jonathan Young Scammon, Florence A. D. Reed, and Arianna E. Scammon by mesne conveyances to them, said Martin Andrews, Phœbe D. Andrews, and Abner L. Andrews in fee simple, subject, however, to the lien of said mortgage. That said premises so conveyed were the following, to wit: A strip of land from off the north side of lot number
233 five (5), in said block number eleven (11), in Fort Dearborn Addition to Chicago, bounded as follows: Commencing in the west line of said lot five, at a point six and five-eighths ($6\frac{5}{8}$) inches south of the northwest corner of said lot; thence running north on

the west line of said lot to the northwest corner thereof; thence east on the north line of said lot to the northeast corner thereof; thence south on the east line of said lot nine and seven-eighths (9⅞) inches; thence westwardly in a straight line to the place of beginning.

The court further finds that said mortgage contained a clause binding the mortgagors to keep the building thereafter erected on the premises insured against loss or damage by fire, and to assign and deliver to complainant the policies of insurance therefor whenever such insurance should be effected; and that it was further provided that the complainant should hold such policy of insurance as collateral and additional security for the payment of the principal sum secured by the mortgage and interest, and should have the right to collect and receive all sums of money that might at any time become collectable upon such policies of insurance, and should apply the same when received in the same manner as far as possible as was provided in the mortgage in case of a sale of the mortgaged premises under the power of sale therein contained. That pursuant to these requirements of the mortgage insurance was obtained in the sum of fifteen thousand dollars upon the buildings erected on the north two-thirds of said lot remaining subject to said mortgage; that the policy of insurance in terms run to J. Young Scammon, and contained a clause in the usual form, "loss, if any,
234 payable to The Connecticut Mutual Life Insurance Company," the complainant. The court further finds that said building was totally destroyed in the great fire of October eighth and ninth, 1871, and that in settlement of the insurance on the same the Fire Insurance Company made a draft for the sum of fifteen thousand dollars, payable to the order of the complainant, and delivered the same to the defendant, J. Young Scammon, who thereupon enclosed the same in a letter addressed to the secretary of the complainant company, and requested that authority might be given to the complainant's Chicago agent to pay over to him, Scammon, or to the Marine Company of Chicago, the proceeds of said draft, to be expended in improvements on said premises; that Scammon then represented to said company that the restoring of said premises had already commenced; that on the fifth day of January, 1872, an agreement, in writing, which is attached to the master's report as an exhibit, was made between the complainant and J. Y. Scammon, by which it was agreed that the complainant should, and did, waive its right to apply the insurance money collected on the mortgaged indebtedness, such waiver being provided for and contemplated in said mortgage, and that said insurance money should be deposited in such bank as should be selected by the defendant, J. Y. Scammon, and assented to by the complainant, to the credit and risk of said Scammon, to be used in the re-erection of buildings on the mortgaged property; that said money should be paid out from time to time on the draft or check of said Scammon, countersigned by complainant's agent, until it should be expended; that as soon as the building or buildings to be erected should be in a situation to be insured the said J. Y. Scammon should
235 cause the same to be insured for the full insurable value

thereof and assign the policies of insurance to the said complainant, and that thereupon all the provisions contained in the mortgage should apply in the case; that it was further provided in said agreement that any receipt or acknowledgement given by complainant, either alone or jointly with others, to any such insurance company, for the purpose of facilitating the collection by Scammon of any insurance money intended to be placed back on the mortgaged premises, should not be considered as a collection of the money by complainant under the conditions of the mortgage and to be applied on the indebtedness secured thereon, but should be regarded as merely enabling Scammon to collect such insurance money, and it was in said agreement expressly provided that the money was not to be applied on said indebtedness, and the mortgage should remain a lien on the premises for the full amount of the principal sum mentioned in the bond, with interest on same, as if said insurance money had not been collected; that in said agreement, among other things, it was further provided that in case the insurance money should not be expended in six months from the date of said agreement, then said agreement should have no effect, and the right of J. Y. Scammon to use and expend the same should thereupon cease, and that the complainant should have the right to draw from the bank where the same was deposited, upon its own check, said insurance money, or so much thereof as had not been then actually expended, and to apply the same in payment of the indebtedness secured by said mortgage. The court further finds that said
236 draft of fifteen thousand dollars for said insurance money was received by complainant, and that the complainant, by its secretary, by endorsement, made the same payable to J. Y. Scammon or order, and delivered the same back to said Scammon so endorsed; that the proceeds of said draft were thereupon deposited under the aforesaid agreement with the Marine Company of Chicago, said agreement having designated said Marine Company as the banking office in which said insurance money should be deposited; that thereafter said J. Y. Scammon drew out of said Marine Company the money thus realized on account of said insurance on his own checks or drafts, and not in pursuance of the said agreement between him and complainant; that no new buildings were erected on the mortgaged premises within six months, or at any time, and the proceeds of the insurance were not used for that purpose as contemplated by the agreement.

The court further finds that when the complainant originally took the said mortgage it, by its agent, knew the state of the title of the mortgaged premises; that in the erection of the building on said premises and causing it to be insured and in collecting rents and paying the insurance premiums and taxes the defendant, J. Y. Scammon, held the property as if it was his own; that the entire business connected with the loan from the complainant, from the time of its original negotiations down to the time of the before-mentioned agreement in relation to the insurance, was transacted by J. Y. Scammon, who kept an account of the property in his bank ledger in which rents by him received were credited, and the security

mentioned for moneys paid out were also entered; that the
237 defendants, Florence A. D. Reed and Arianna E. Scammon, knew nothing at the time of the insurance obtained upon the property, nor anything in relation to the agreement between their father and the complainant made in 1872; that complainant entered into the agreement for the payment of the insurance money by Scammon, to be by him used in rebuilding, in good faith, and that said Scammon received it in good faith for that purpose, and the officers of the bank where it was deposited understood that the money was deposited there as a special deposit subject to said agreement.

The court finds that Florence A. D. Reed and Arianna E. Scammon did not know that this insurance had been effected on this property, or of the payment of premiums thereon, and were never consulted about the disposition of the insurance money, and had no knowledge of and gave no consent to its payment to their father and its deposit in the bank, and have never asserted any rights in relation thereto until the commencement of this suit.

The court further finds that the acts of Florence A. D. Reed and Arianna E. Scammon were limited to the execution of the bond and mortgage and the making of the agreement for partition; that said insurance was furnished under the covenants of the mortgage, and pursuant to the requirements thereof, and was an additional security held by the complainant for the payment of the principal sum and interest secured by said mortgage, and that the covenants in the mortgage for insurance operated as an assignment of the insurance fund when collected to the mortgagee; that the act- of the complainant, its receipt of the draft for said insurance money and its endorse-
238 ment thereof to the defendant, J. Y. Scammon, by ordinary commercial endorsement, and its assumed control over the ultimate destiny and use of the proceeds thereof, were equivalent to a collection of the insurance by complainant; that the receipt by the complainant of said insurance money operated as a satisfaction *pro tanto* of said mortgage, so far as the estate and interests of the defendants, Florence A. D. Reed and Arianna E. Scammon, are involved, but that so far as the life estate of J. Young Scammon is concerned said mortgage remains an equitable lien and encumbrance for the full amount thereof.

And this court, being fully advised in the premises, doth find, adjudge, and decree that there is, at the date of the entry of this decree, due to the complainant in this cause from said defendant, Jonathan Young Scammon, upon said bond and mortgage and the covenants therein contained the principal sum of twenty thousand dollars, and also for interest thereon the sum of thirteen thousand and ninety-three dollars and thirty-two cents, as reported by said master; and also for interest since the date of said master's report to the date of the entry of this decree the sum of fourteen hundred and four dollars and fourty-four cents; and also for moneys paid for taxes and to redeem from tax sales under the covenants of said mortgage the sum of three thousand two hundred and seventy-five dollars and forty-two cents; and also for interest thereon the sum of four hundred and ninety dollars and seventy-three cents, as re-

ported by said master; and also for interest since the date of said master's report to the date of the entry of this decree the sum of two hundred and eighty-seven dollars and fifty-one cents,
239 which said several sums amount altogether to the sum of thirty-eight thousand five hundred and fifty-one dollars and forty-two cents ($38,551.42), and that said last-mentioned sum is a valid and first lien upon the estate for the term of the natural life of said Jonathan Young Scammon in the following-described lands and premises, to wit: The north two-thirds of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, excepting therefrom a strip of land from off the north side of said lot bounded as follows: Commencing in the west line of said lot at a point six and five-eighths (6⅝) inches south of the northwest corner thereof; thence running north on the west line of said lot to the northwest corner thereof; thence east on the north line of said lot to the northeast corner thereof; thence south on the east line of said lot nine and seven-eighths (9⅞) inches; thence westerly in a straight line to the place of beginning.

And the court further finds, adjudges, and decrees that of the said sum of thirty-eight thousand five hundred and fifty-one dollars and forty-two cents so due to said complainant upon said bond and mortgage and the covenants therein contained the said defendants, Florence A. D. Reed and Arianna E. Scammon, are personally liable for a part thereof, namely, for the principal sum of five thousand dollars ($5,000.00), and for the sum of thirty-two hundred and seventy-three dollars and thirty-three cents ($3,273.33) for interest thereon as reported by said master, and for the sum of three hundred and fifty-one dollars and eleven cents ($351.11) for interest on said five thousand dollars since the date of said master's report to the date of the entry of this decree,
240 and also for the sum of thirty-two hundred and seventy-five dollars and forty-two cents ($3,275.42) for moneys paid for taxes and to redeem from tax sales under the covenants of said mortgage, and for the sum of four hundred and ninety dollars and seventy-three cents ($490.73) for interest thereon as reported by said master, and for the sum of two hundred and eighty-seven dollars and fifty-one cents ($287.51) for interest since the date of said master's report to the date of the entry of this decree on said moneys paid for taxes and to redeem from tax sales, amounting altogether to the sum of twelve thousand six hundred and seventy-eight dollars and ten cents ($12,678.10), and that said sum of twelve thousand six hundred and seventy-eight dollars and ten cents ($12,678.10) is a valid and first lien upon the estate in remainder of them, said defendants, Florence A. D. Reed and Arianna E. Scammon, and each of them, after the expiration of the life estate of said Jonathan Young Scammon in the said premises, to wit, the north two-thirds of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, excepting therefrom a strip of land from off the north side of said lot bounded as follows: Commencing in the west line of said lot at a point six and five-eighths (6⅝) inches south of the northwest corner thereof; thence

running north on the west line of said lot to the northwest corner thereof; thence east on the north line of said lot to the northeast corner thereof; thence south on the east line of said lot nine and and seven-eighths (9⅞) inches; thence westwardly in a straight line to the place of beginning.

And the court further finds, adjudges, and decrees that said
241 sum of twelve thousand six hundred and seventy-eight dollars and ten cents ($12,678.10) is a valid and first lien upon the following-described lands and premises, to wit, a strip of land from off the north side of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, bounded as follows: Commencing in the west line of said lot five (5) at a point six and five-eighths (6⅝) inches south of the northwest corner of said lot; thence running north on the west line of said lot to the nortwest corner thereof; thence east on the north line of said lot to the northeast corner thereof; thence south on the east line of said lot nine and seven-eighths (9⅞) inches; thence westwardly in a straight line to the place of beginning.

It is therefore ordered, adjudged, and decreed, and this court, by virtue of the power and authority in it vested, doth order, adjudge, and decree, that unless some of the defendants in this cause pay or cause to be paid to the complainant within five days from the date of the entry of this decree the said sum of thirty-eight thousand five hundred and fifty-one dollars and forty-two cents ($38,551.42), with interest thereon at the rate of six per centum per annum from the date of the entry of this decree to the day of such payment, all and singular the said estates or interests in the land mentioned and described herein which shall not have been relieved and discharged by such payment from the lien of the respective amounts which are in and by this decree found to be liens on said estates or interests in the said land, respectively, or so much of said respective estates or interests in said land as may be sufficient to satisfy the amount due to the complainant, as herein adjudged, with interest on said amount as herein stated, and the costs in this cause, and which
242 may be sold separately without material injury to the parties interested, be sold at public auction to the highest bidder for cash by Henry W. Bishop, Esq., one of the masters in chancery of this court. And it is further ordered that he make such sale at the main entrance door on Adams street of the United States Government building, wherein this court is held, in the city of Chicago, in Cook county, Illinois, and that he give public notice of the time and place of holding such sale by publishing an advertisement thereof once a week for three successive weeks in a newspaper published in the city of Chicago, in the county of Cook and State of Illinois, the first publication of such notice being not less than twenty days previous to the time of such sale; that at such sale the complainant or any of the parties to this cause may be the purchaser or purchasers; that the said master shall give to any purchaser at such sale a certificate of sale, in pursuance of the laws of the State of Illinois, concerning the sale of real estate, by virtue of a decree of foreclosure of mortgage, and shall cause a duplicate of such certificate to be re-

corded, as required by law, and said master shall sell said estate in remainder and said life estate herein described prior to offering for sale said tract of land so conveyed to Martin Andrews and others as aforesaid. The premises authorized to be sold under and by virtue of this decree are the following, to wit, the estate in remainder after the expiration of an estate for the term of the natural life of Jonathan Young Scammon in the following-described land and premises, to wit, the north two-thirds of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, in the county of Cook and State of Illinois, excepting therefrom a strip of
243 land from off the north side of said lot five bounded as follows: Commencing in the west line of said lot at a point six and five-eighths (6⅝) inches south of the northwest corner thereof; thence running north on the west line of said lot to the northwest corner thereof; thence east on the north line of said lot to the northeast corner thereof; thence south on the east line of said lot nine and seven-eighths (9⅞) inches; thence westwardly in a straight line to the place of beginning. An estate for the term of the natural life of Jonathan Young Scammon in the following-described land and premises, to wit, the north two-thirds of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, in the county of Cook and State of Illinois, excepting therefrom a strip of land from off the north side of said lot five bounded as follows: Commencing in the west line of said lot at a point six and five-eighths (6⅝) inches south of the northwest corner thereof; thence running north on the west line of said lot to the northwest corner thereof; thence east on the north line of said lot to the northeast corner thereof; thence south on the east line of said lot nine and seven-eighths (9⅞) inches; thence westwardly in a straight line to the place of beginning. A strip of land from off the north side of lot number five (5), in block number eleven (11), in Fort Dearborn Addition to Chicago, in the county of Cook and State of Illinois, bounded as follows: Commencing in the west line of said lot at a point six and five-eighths (6⅝) inches south of the northwest corner thereof; thence running north on the west line of said lot to the northwest corner thereof; thence east on the north line of said lot
to the northeast corner thereof; thence south on the east line
244 of said lot nine and seven-eighths (9⅞) inches; thence westwardly in a straight line to the place of beginning; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging.

And it is further ordered, adjudged, and decreed that in the distribution of the proceeds of said sale the amount bid and received for the said life estate of said Scammon be applied first to the satisfaction of that portion of the amount found due on said mortgage by this decree, for the payment of which said life estate is found and decreed to be the sole security, and no portion of the amount realized from the sale of the said life estate in said lands shall be applied in payment of the costs of this suit or of any moneys found due by this decree on account of taxes or on account of that part of the principal and interest of said bond for which there is other security

until said sum for which said life estate is the sole security shall have been fully paid.

It is further ordered that if the said premises or any parcel thereof shall at such sale be struck of- and sold by the master to the complainant in this cause, the complainant shall be required to pay to the master only so much of the complainant's bid as shall, taken together with other moneys paid to the master at such sale on bids for parcels by other persons, if any there be, be sufficient to satisfy the expenses of the sale and the master's fees, disbursements, and expenses, and the costs of this suit, and also any excess of the remainder of the amount of said bid, after such payment, over the amount due the complainant under this decree for indebtedness secured by said mortgage.

245 It is further ordered that said master make report to this court of such sale, and of his acts and doings hereunder, for approval and confirmation and for further directions herein, and that he retain from the moneys received by him on said sale the amount of his fees, disbursements, and commissions thereon, and bring the residue of such moneys, if any, into court, to abide the further order of the court, and that he take the receipt of the clerk of this court therefor, and file the same with said report; and if the price for which said premises shall be sold shall be insufficient to satisfy the amount so found and adjudged to be due to the complainant, with the interest thereon, and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency in his said report of sale.

And it is further ordered that the clerk of this court hold such moneys so to be paid him by said master subject to the further order and direction of this court in this cause.

It is further ordered that if any sale made by said master under this decree shall be confirmed by this court, and if the land so sold shall not be redeemed according to the laws of the State of Illinois, the master in chancery of this court shall, after the expiration of the time allowed by law for such redemption, execute and deliver to the legal holder of any certificate of sale issued under this decree a deed of conveyance of the land in such certificate described which shall not have been so redeemed.

And it is further ordered, adjudged, and decreed that the defendants in this cause, and all persons claiming by, through, or under them, or either of them, since the filing of the original bill of complaint in this cause, be forever barred and foreclosed

246 from all equity of redemption and claim of, in, and to said above-described land and premises, and any part and parcel thereof which shall be sold as aforesaid under this decree, and which shall not be redeemed according to law.

And it is further ordered, adjudged, and decreed that upon the execution and delivery of the deed or deeds of conveyance, as aforesaid the grantee or grantees, his or their heirs and assigns, be let into possession of the portion of said mortgaged premises so conveyed to him or them, and that any of the parties in this cause who may be in possession of said premises, or any part thereof, and any person who since the commencement of this suit has come into possession

under them or either of them, on the production of said master's deed of conveyance, and of a certified copy of the order of this court confirming the report of said sale, surrender possession thereof to such grantee or grantees, his or their heirs or assigns. And thereupon said complainant, The Connecticut Mutual Life Insurance Company, by its solicitors, prays an appeal to the Supreme Court of the United States, which said appeal is allowed upon said complainant giving bond herein in the sum of five hundred ($500.00) dollars within thirty days, with sureties to be approved by this court.

And it is further ordered and directed that the receiver heretofore appointed in this cause continue in his office as such receiver and perform the duties pertaining thereto until the further order and direction of this court.

And thereupon the defendants, Florence A. D. Reed and Arianna E. Scammon, by their solicitor, also pray an appeal to the Supreme Court of the United States from so much of said decree as
247 directs the reversionary estate of these defendants in said mortgage premises to be sold separate from the life estate of the defendant, J. Young Scammon, to satisfy that portion of said mortgage indebtedness remaining unpaid after applying the sum of fifteen thousand dollars found by the court to have been paid out of the moneys realized from insurance on the buildings destroyed standing on said premises, and also to satisfy and repay to complainants the moneys shown to have been paid for taxes on said premises, and also from so much of said decree as provides that all the costs of said suit shall be paid out of the proceeds arising from the sale of the reversionary estate of these defendants, which said appeal is allowed on said defendants giving bond herein in the sum of five hundred dollars within thirty days, with sureties to be approved by this court.

248 Afterwards, to wit, on the ninth day of October, A. D. 1882, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, The Connecticut Mutual Life Insurance Company, a corporation created by and existing under the laws of the State of Connecticut, as principal, and Edward S. Isham, of the county of Cook and State of Illinois, as surety, are held and firmly bound unto Jonathan Young Scammon, Maria S. Scammon, Florence A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, assignee; Charles Comstock, First National Bank of Macomb, Illinois, Hiram Wilson, The Ridgley National Bank, Charles Chandler, William H. Harper, Charles Birkenshaw, Farlin Q. Ball, The Crane Brothers Manufacturing Company, Benjamin E. Gallup, Francis B. Peabody, Frank B. Orr, Oswald Lockett, The Mechanics' National Bank of Chicago,
249 Thomas C. Boyd, James J. Bufton, Phœbe D. Andrews, Abner L. Andrews, Emma Andrews, The U. S. Mortgage Company, William H. Stevens, Henry Bromley, William D. Dillard, The Manufacturers' National Bank of Racine, Alexander M.

Byers, William McCullough, Ebenezer M. Byers, George Scoville, and Albinus B. Wood in the penal sum of five hundred dollars, lawful money of the United States of America; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly, severally, and firmly, by these presents.

Sealed with our seals and dated this third day of October, A. D. 1882.

The condition of the above obligation is such that whereas lately, at a term of the United States circuit court for the northern district of Illinois, in a cause depending therein between The Connecticut Mutual Life Insurance Company, complainant, and Jonathan Young Scammon, Maria S. Scammon, Florence A. D. Reed, and others, a decree was entered, on the second day of October, A. D. 1882, providing for the foreclosure of the mortgage sought to be foreclosed by said complainant, from which said decree the said complainant has prayed for and obtained an appeal to the Supreme Court of the United States.

250 Now, therefore, if the said The Connecticut Mutual Life Insurance Company shall duly prosecute its said appeal to effect, and if it fail to make good its plea shall answer all costs rendered or to be rendered against it then the above obligation to be void; otherwise, to remain in full force and effect.

[SEAL.] THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By JOHN M. TAYLOR, *Sec'y.*
EW'D S. ISHAM. [SEAL.]

Approved. H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Oct. 9, 1882. Wm. H. Bradley, clerk.

251 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in said entitled cause wherein The Connecticut Mutual Life Insurance Company is the complainant and Jonathan Young Scammon, Maria S. Scammon, *et al.* are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this thirtieth day of October, A. D. 1882.

[Seal of Circuit Court U. S., Northern Dist. Illinois. 1855.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 162. The Connecticut Mutual Life Insurance Company, appellant, *vs.* Jonathan Young Scammon, Maria S. Scammon, Florence A. D. Reed, Joseph S. Reed, Arianna E. Scammon, Martin Andrews, Caroline Andrews; Mark Kimball, assignee; Charles Comstock, First National Bank of Macomb, Ills., Hiram Wilson, *et al.* Filed 6th November, 1882.

117-634

Office Supreme Court U. S.
FILED.
MAR 11 1886
JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 162.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs.

JONATHAN YOUNG SCAMMON, FLORENCE A. D. REED, ARIANNA E. SCAMMON, MARTIN ANDREWS et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT OF ISHAM & LINCOLN,

OF COUNSEL FOR APPELLANT.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO

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JONATHAN YOUNG SCAMMON, FLORENCE A. D. REED, ARIANNA E. SCAMMON, MARTIN ANDREWS et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT.

The cause below was a suit for the foreclosure of a mortgage executed September 10, 1866, to the appellant, by the appellees, J. Y. Scammon, Florence A. D. Reed, (formerly Scammon), and Arianna E. Scammon, the two last named being daughters of the appellee, J. Y. Scammon. The mortgage originally covered lot 5, in block 11, in Fort Dearborn addition to Chicago, and was made to secure the repayment of a loan of thirty thousand dollars and interest thereon, five years after the above mentioned date. It was admitted in the bill (folio 13), that in 1867 the sum

of ten thousand dollars was paid, to apply on the principal, and that the mortgagee thereupon, at the request of the mortgagors, released from the lien of the mortgage the south one-third of the lot above described, and it was claimed that at the date of filing the bill for foreclosure, June 23, 1876, there was due the complainant, secured by the mortgage on the north two-thirds of the lot, the balance of the original principal, namely, twenty thousand dollars and interest thereon, at the rate of eight per centum per annum, from the 10th day of September, 1873, besides certain sums of money paid by the mortgagee to redeem the mortgaged property from tax sales. During the progress of the cause a supplemental bill of complaint was filed, setting forth the payment by the mortgagee, after the beginning of the suit, of certain sums of money to pay taxes and redeem from tax sales to protect its security. The original bill, and the supplemental bill, were taken as confessed against all the defendants, except the defendants Florence A. D. Reed and Arianna E. Scammon, who interposed a defense, hereafter mentioned, and the defendant Martin Andrews, acting for himself and other defendants of the same name, who also interposed a defense, hereafter mentioned. The defense of Florence A. D. Reed and Arianna E. Scammon was interposed on the following alleged circumstances. The land mortgaged in 1866 had before that been owned in her own right by the wife of J. Y. Scammon, who was then dead, and the property had descended to her children, Charles, Florence and Arianna, subject to a life estate therein in their father, J. Y. Scammon. Prior to the making of the mortgage J. Y. Scammon had acquired the interest of his son Charles, so that at the date of the mortgage J. Y. Scammon owned *in fee* an un-

divided *one-third* of the premises and a life estate in the other two-thirds. Each of his daughters owned an undivided one-third, subject to a life estate in him. This being the state of the title and it being then so known to the mortgagee (folio 94) Mr. Scammon and his two daughters all joined September 10, 1866, in the execution of a bond to the appellant, conditioned for the payment of the sum of thirty thousand dollars on the tenth day of September, 1871, with interest payable half yearly at the rate of eight per centum per annum, and to secure the payment of this bond they all executed the mortgage in question. The mortgage (folio 132) contained a covenant on the part of the three obligors to pay the indebtedness and interest, and that they would not, until the payment of the indebtedness, suffer the land, or any portion thereof, to be sold for taxes, and also that they would keep all the buildings then or thereafter to be erected upon the land fully insured against loss by fire, and would assign and deliver to the mortgagee the policies of insurance, and that the mortgagee should hold such policies as collateral and additional security for the principal indebtedness and interest, "and shall have the right to collect and receive "any and all money and sums of money that may at any "time become collectible or receivable upon each, all and "every of such policies of insurance and apply the same "when received in the same manner, as far as possible, as "is hereinafter provided for in case of a sale of said above "described premises under the power of sale hereinafter "contained; but nothing hereinafter contained shall be "construed as requiring the said party of the second part, "its successors or assigns (the mortgagee), to incur any "expense, or make any effort to collect any money that "may become due on any of such policies of insurance;

"but if it or they shall elect not to collect the same they "shall make such election within a reasonable time after "such money shall become collectible, and on demand of "said parties of the first part, or their legal representa- "tives (the mortgagors), shall thereupon forthwith, after "making such election not to collect, re-assign and deliver "such policy or policies of insurance to said parties of the "first part, their executors, administrators or assigns."

It also appears (Folio 44 and 94) that by an arrangement made at the time the south one-third of the lot was released, between Mr. Scammon and his two daughters, the part released was set off to him in severalty in lieu of his undivided one-third interest in fee simple in the whole lot, and the two-thirds of the lot remaining subject to the mortgage became as between them the property of the daughters, subject to a life estate of their father. There is no evidence, however, that the mortgagee either constructively or in fact knew until the foreclosure proceedings that, as between himself and his daughters, Mr. Scammon had, after the mortgage, changed the ownership of the part remaining subject to the mortgage, by adding to the title owned by the daughters at the time of the mortgage, namely, a reversion in an undivided two-thirds, the reversion in the other third.

The building on the property was totally destroyed in the great fire of October 9, 1871. There was at the time a policy of insurance upon it issued by the Liverpool and London and Globe Insurance Company to J. Young Scammon for the amount of fifteen thousand dollars. (Scammon's Testimony, 93, *et seq.*) This policy was taken out by, and in the name of, and paid for by J. Young Scammon, and it did not purport to insure any interest of his daughters in the building. It was pro-

vided in the policy of insurance that the loss, if any, should be payable to the mortgagee. The loss was adjusted as being $25,280, and the insurance company, about December 16, 1871, gave to J. Y. Scammon a draft for the full amount of the policy, $15,000, the draft being made payable to the order of the Connecticut Mutual Life Insurance Company, the mortgagee. Upon receiving the draft Mr. Scammon, as appears by Exhibit D to his testimony (folio 162), sent the draft by mail to the mortgagee, saying in his letter:

"I had supposed that Major Sperry was fully author-
"ized to receipt for all moneys coming to me * * *
"for insurance upon premises mortgaged to your com-
"pany and to pay the same over to me or into the
"marine company to be expended in rebuilding. * * *
"Will you please give him directions to do so and en-
"dorse and return to me the enclosed draft. I have com-
"menced rebuilding all the structures upon which you
"have insurance and I want the money."

This resulted in an agreement made on the 5th day of January, 1872, between the mortgagee and J. Y. Scammon alone, by which it was agreed that the mortgagee should, and did waive its rights to apply the insurance on the mortgage indebtedness, and that this money should be deposited in such bank as should be selected by Scammon, and assented to by complainant, to the credit and at the risk of Scammon, to be used in the erection of buildings on the mortgaged premises; that this money should be *paid out in the erection* of such buildings, from time to time, *on the drafts or checks* of Scammon, *countersigned by the mortgagee's agent*, until it should be fully expended; and there were further provisions which are set out in full at folio 155 *et seq.* of the record.

Thereupon the mortgagee, by its secretary, by indorsement on the draft for $15,000 received from the fire insurance company, made the same payable to J. Y. Scammon or order, who designated the Marine Company, of which he was president (folio 118), as the banking office in which the insurance money should be deposited, and the agent of the mortgagee (folio 118) delivered the same, so indorsed, with a copy of the agreement, to Scammon as president and manager of the Marine Company, at its banking office, and the draft was collected by the Marine Company (folio 99). But the money was so placed by him that it could be drawn out of the Marine Company by Scammon *alone*, who was, as said before, its president, on his own checks and drafts, and not in compliance with the aforesaid agreement between him and the mortgagee, and without the consent or the counter signature of its agent. No new structures were erected on the mortgaged premises, and the proceeds of the insurance were not used by Scammon for the purpose agreed. The money was all abstracted fraudulently by Scammon, personally, without knowledge or consent of the mortgagee's agent who was to countersign his checks. Not a dollar was expended on the property in rebuilding or otherwise; but it was all applied as it was abstracted, to the personal uses of Scammon and in fraud of the agreement by which he got the money within his power.

Default having been made in the payment of the principal and of interest and taxes after September 10, 1873, the bill for foreclosure was filed and Scammon's daughters filed their answer (folio 42) setting up the above facts, and claimed that the dealing with the $15,000 of insurance money had reduced the debt to $5,000 and interest, and that the life estate of Scammon should be sold separately and first to realize that amount, and there-

upon that they and their reversion should be held discharged of the lien of the mortgage. The decree (folio 229) does not comply with the prayer of the reversioners in full, but finds the total debt to have been diminished, *as to them*, by the amount of the insurance money and interest, but not to have been changed as to Scammon, and directs separate sales of the life estate and the reversion, the first being charged with the whole debt and the last being charged with the debt diminished by a credit of the insurance money. The defendants Andrews filed their answer (folio 77) alleging the building by them of a party wall along the north line of the mortgaged lot under a party-wall agreement alleged to have been made before the mortgage, and claimed a right of contribution from any subsequent owner of the mortgaged lot who should use the wall or that "the residue of said lot five, "or of the title thereof, should be first sold and dis- "posed of towards the satisfaction of said mortgage."

No testimony was taken under the Andrews answer, but the decree (folio 232) finds them to be the owners of a specified part of the mortgaged lot, a narrow strip on the north, and makes in favor of that strip the same reduction of the total debt as is made in favor of the reversion, and orders that that part be sold separately and last. From this decree so adjudicating the rights of the mortgagee and ordering a sale accordingly, the mortgagee has appealed to this court.

Subjects upon which Error is Assigned.

The appellant makes assignment of errors in the decree above described, as follows:

1. It is submitted that the court erred in making said

adjudication as to the lien of the indebtedness on the narrow strip of land at the north side of the mortgaged premises.

2. It is submitted that the court erred in crediting on the mortgage debt in favor of those of the mortgagors having an estate in remainder the amount of the insurance money realized on the policy issued to the other mortgagor, J. Y. Scammon.

In the court below the daughters objected to their interest being charged, as was done by the decree, with a lien for the amount of taxes paid by the mortgagee to protect its security, on the ground that their father, having a life estate, was bound to pay the taxes. This is no doubt true as between themselves and their father, but the mortgagee has nothing to do with protecting their rights in that respect. They joined in the covenant to the mortgagee that they would keep down the taxes, and that if they did not, moneys paid for that purpose by the mortgagee should be added to the debt secured by the mortgage, and made a lien on their reversion as well as on the life estate. (Folios 137, 141 and 144.)

Even in the absence of a covenant of the reversioner, his interest is subject to a lien for the amount of taxes paid by the mortgagee to protect the security. (*Sidenberg* v. *Ely et al.*, 90 N. Y., 257.) In this case we have the actual joint covenant of the life tenant and reversioners that such payment shall be secured by a lien on the whole estate, and it is not pretended that it has been in any way released.

ARGUMENT.

1. There is not only no evidence but not even a claim set up in the record to support the finding of the decree (folios 232, 233) as to the narrow strip of land segregated by the decree from the main body of the mortgaged premises, and the adjudication (folio 241) that it is subject to the lien of only a small part of the total debt. It was in evidence (folio 148) that J. Y. Scammon, in preparing to build on the land in 1866, made with the adjoining owner on the north a party wall agreement in respect to locating and using the party wall to be built by Scammon and afterwards agreed (folio 153) with his neighbor that the party wall erected should be considered as built upon the dividing line, fixing that line as the center of the party wall; but there is no evidence or claim that the neighbor or his grantees, by this agreement or otherwise, acquired any title to any part of the mortgaged land, nor is there any evidence that the mortgagee had notice of the agreements. The defendants Andrews alleged in their answer (folio 78) that they have erected a party wall on the north line of the mortgaged premises, one half resting on said premises. That it was built at their expense under a party wall agreement, and that they have a right to contribution for the expense of the wall from the owner of the mortgaged premises who may hereafter use the same. They claim that their right is prior to the mortgage, but that if their right is held to be subject to the mortgage, the residue of the mortgaged

premises not covered by the party wall should be first sold in satisfaction of the mortgage. They tendered no proof of their allegations, and the particular part of the decree (folios 232, 233), which finds an equity of redemption of the narrow strip to be in them, and relieves it of the lien of a large part of the debt, is not in accordance with their claim, and there is nothing in the record by which it can be sustained. There is no evidence that the party wall built by Scammon is not still standing; there is no evidence that the defendants Andrews built any wall, or owned any land, and there is not even anywhere in the record any evidence or suggestions for the metes and bounds describing the strip in the decree. It is submitted that the decree must necessarily be reversed in that regard.

2. The court finds in the decree (folio 238) that the daughters are entitled in favor of their estate in remainder in the mortgaged land to a credit upon the whole indebtedness of a sum equal to the insurance money as of the time when it was collected, and orders separate sales of the life estate of J. Y. Scammon, whose interest is charged with the whole indebtedness, and of the estate in reversion of the daughters, which is charged with the same amount, less the credit above mentioned.

We submit that the court erred in giving the daughters credit for the insurance money.

If we correctly understand the learned judge whose opinion in the case is found at folio 194 of the record, he bases his ruling upon the following views:

That "it was the legal duty of Scammon as the life "tenant receiving the rents and profits, to keep the build-"ings as an entirety insured." (Folio 212.)

That Scammon "stood in a two-fold relation to "the property. First as the owner of the life estate; "secondly, as the representatives to a certain extent of "owners of the reversion." (Folio 207.)

And that the insurance money was a fund owned to some indefinite extent by the reversioners. (Folio 209.)

It is clear from the evidence that aside from executing the original mortgage and making the partition arrangement, the daughters did nothing whatever about the property. Their father was the life tenant in possession, and, to use his own language: "I treated it as my own; "the insurance was in my own name; I built the buildings "upon it and collected the rents and paid all the taxes, as "though it was my own."

In what one of these things except in building the buildings out of the borrowed money, which was done in 1866, did he represent the reversioners? He was the life tenant and it was his duty to pay the taxes and his right to collect the rents. We have not been able to find any authority for the view of the learned judge that it is the duty of a life tenant to insure for the benefit of the reversioners. It is not in the books as one of his duties and there is no statute in Illinois that makes it so. Scammon did not insure any interest in the property except his own. In the only respect in which the daughters' interest was not protected by the performance of the father's duty as life tenant, namely, by procuring insurance of their interest as reversioners in the building, he did nothing. The loss on the building was $25,000 and he had insured it for $15,000 in his own name and at his own expense, and no interest in it was insured thereby except his own life interest.

The mere relation of mortgagor and mortgagee or of life tenant and reversioner does not give the mortgagor or reversioner any interest in insurance procured by the mortgagee or life tenant. Each of them has a separate insurable interest. *Russell* v. *Southard*, 12 How., 139; *Ely* v. *Ely*, 80 Ills., 532; *Honore* v. *Lamar Ins. Co.*, 51 Ill., 409; *White* v. *Brown et al.*, 2 Cush. 412; *Franklin M. & F. Ins. Co.* v. *Drake*, 2 B. Monroe, 47; *Louden* v. *Waddle*, 98 Penn. State, 242.

In the last case cited, a dowress in possession, being also the owner of a mortgage of the fee of the same property, insured the building in her own name, and upon a loss happening and the collection of the money by herself, it was held that no person except herself as dowress had any interest in the money and particularly that the money did not reduce the mortgage debt held by her.

In *Redfield* v. *Holland Purchase Ins. Co.*, 56 N. Y., 354, the equitable owner of a life estate was held entitled to recover on a policy issued to him in the usual form, it not appearing that the injury to his life estate did not equal the sum for which the property was insured.

There is no evidence in this case that there was any relation between Scammon and his daughters in respect to this property other than that of life tenant and reversioner. There is no act of his in managing the property which was not merely the act of a life tenant. There is no evidence that he acted as the agent of his daughters. If he had procured a policy of insurance running to them, or to himself and them together, or had collected from them a part of the cost of the policy, he would, so far as their interest was affected, have been acting for them in that particular. But he did not do so,

and, as we have said, every act of his in respect to the property was in the exercise of his own rights and in the performance of his own duties as life-tenant, and not as agent for any one. The building was worth at least $25,000; if the amount insured by Scammon was a fair valuation of his interest in it, and nothing to the contrary appears, then the daughters should, to protect themselves, and in the performance of their covenant to the mortgagee, have procured additional insurance on their interest, but they did nothing, and now claim a benefit in a fund in which, in the absence of the mortgage, they would not have had the slightest interest. Without the mortgage the whole insurance fund collected under the policy issued to Scammon would have belonged to him absolutely, to use as he saw fit; how then has the existence of the mortgage given the revisioners an interest in the insurance money? It is clear from the language of the opinion in the record that the court considered that the reversioners as such owned the insurance money jointly with the life tenant. It is not so clear whether they were considered to get their interest through what the court regarded as performance of the duty of the life-tenant to insure for the reversioners, or the assumption that in procuring insurance in his own name, he acted as the agent of the reversioners. We submit that it was not his duty to insure to protect the reversioners, and that he never acted, or claimed to act, or was regarded by the reversioners as acting, as their agent in what he did. On the contrary, we claim that the money was his own, subject to his covenant that the mortgagee might apply it on the debt, at its election, and that it being his own money, if it had been applied on the debt, his co-obligors would, in the absence of some ex-

press agreement with him, limiting their liability as between themselves, have been liable to a claim for contribution, each to repay him one-third of the amount (1 Parsons on Contracts, 31; 1 Hilliard on Mtges., 275, n. (a.); *Cumming et al.* v. *Williamson et al.*, 1 Sandford, Ch., 18); and that upon the satisfaction of the mortgage he would have been entitled to be subrogated to the mortgagee to preserve the lien of his claim for any payment beyond his own *pro rata* share of the principal debt, against the separate estate of his co-obligors. *Shinn* v. *Shinn*, 94 Ill., 477. If the debt had, at the time of the fire, been just equal to the insurance instead of greater, then the court below would, of course, under its ruling, have held that the reversion was, by the dealings with the draft, entirely discharged of the lien of the mortgage and that the reversioners owed nothing to any one; nothing to the mortgagee, because, as to it, the debt was discharged, and nothing to the life tenant for contribution, because he had not in fact paid anything to the mortgagee. If, however, the mortgagee had in such case, and in the exercise of its election, received and applied the insurance money in satisfaction of the debt, then, as we claim, it would have been a payment of the life tenant's money and the reversioners would be bound to contribute to the life tenant two-thirds of the amount with interest and his claim therefor would be a lien on their estate. The same principle applies to the *pro tanto* satisfaction decreed and thus the reversioners are by the decree placed in a better position to the extent of two-thirds of the insurance money and interest thereon than if the mortgagee had actually received and applied the money on the debt. This surely should not be. If it is con-

sidered that the mortgagee was bound to receive and apply this insurance money, which we deny, it is clear that the reversioners should not be now in a better place than if it had done so. If as to them the money is to be regarded as actually paid when it was not, but was used by the life tenant, then the mortgagee is entitled to the benefit of the lien which the life tenant would have had by subrogation if the money had actually been paid by him. By actual payment of his money, their estate would have been freed from the lien, not of their own share of the amount of the payment, but of the one-third share of their co-obligor, the life tenant, that is five thousand dollars and interest thereon, and this we submit is necessarily the limit in this case of the credit to which they are entitled, if the mortgagee was bound as to them, to receive the money. We urge, however, that the credit of even one-third of the insurance money can only be made if the mortgagee was bound to receive and apply the money on the mortgage, and that this is not the case.

We have for convenience in places spoken of the life tenant and reversioners as father and daughters, but there is not in the record any evidence or suggestion that in this business there was any parental, filial, fiduciary or agency relation between them; he was the life tenant and acted simply as such; they were the reversioners and did nothing whatever after executing the bond and mortgage. If the view of the court below is taken that he all through acted as their agent and that the insurance was procured by him in his own name, not distinctly for his own benefit as a life tenant, but as agent for them, and although paid for by his own money and not at all by theirs, and that the mortgagee was bound to know that he was such agent

in *acquiring* the insurance, *why* is the presumed agency *stopped just at that point?* Why, if he was the presumed agent to acquire the money in his assumed general charge of their affairs, was he not an agent to contract to use it for the reversioners' benefit in putting back the building? That he afterwards violated his contract or the duty of his agency, by using his position as president of the bank in which by the agreement it was deposited, to draw it out without the agreed counter-signatures, is a subsequent matter for which he, and *not the mortgagee*, should be taken to task by his daughters. It is upon this view of an agency assumed, without evidence, to exist so long as it would be for the benefit of the reversioners, and assumed not to exist in the same business when such assumption does not benefit them, that the decree below was based. We contend that no such agency existed, and on this point we ask the attention of the court to the brief testimony of all the obligors. (Folios 93, 109 and 112.)

The existence of an agency is not needed to explain any fact. It is contradicted by all the facts. A life tenant properly does what Scammon did. An agent should have done what he did, and more. An agent of the reversioners would have insured not merely his own interest, but the interest of the reversioners.

The covenant of the mortgagors (folio 138), quoted in full in our statement, is in substance that they would insure "to the fair insurable value of the buildings," and that the policy should be assigned to and held by the mortgagee "as collateral and additional security," and that the mortgagee "shall have the right to" (not *shall*, absolutely) collect and apply the money arising there-

from, but if it shall elect not to collect, it shall re-assign. Now, we do not contend that the mortgagee could have re-assigned to Scammon any draft for money coming from a policy issued to his daughters. That is not this case. The covenants of the daughters to furnish insurance covering the reversionary interest in the property was not performed. Their reversion was not insured. The building was in fact worth more than $25,000, and Scammon insured his interest at $15,000. If his life interest was not worth so much, it is indisputable that the insurer could have reduced its payment to the actual value of his interest, and the mortgagee could not have claimed that the fee was insured. Whether his interest was worth so much was a matter between him and the insurer, in which his daughters had no interest. That the insurer did not question the value of his interest did not change the ownership of the fund paid to him. Scammon performed his part of the covenant as to insurance, and gave the mortgagee a policy on his life estate: and under the mortgage it was "collateral "security" furnished, not by the daughters, but by Scammon, which the mortgagee might use or not at his election. If it elected not to use it, it was by the terms of the mortgage to be re-assigned. What right or equity have Scammon's daughters, who covenanted to furnish insurance on their estate as collateral security, but did not do so, in the collateral security given by Scammon under his covenant? The mortgagee expressly had the right to elect not to collect the avails of the collateral security, and it was then its duty to re-assign it. In this case it elected not to collect, and it was therefore to re-assign. With whom was it to deal? Surely with the mortgagor who, in compliance with his covenant, had given the collateral

security to be re-assigned, and not with those who had failed to give any. The covenant provided for re-assigning the policy. As the policy was, strictly speaking, never assigned to the mortgagee, but, in lieu of an assignment, contained the usual mortgage clause; the only re-assignment to be made was of the draft handed to Scammon by the insurer, and made payable to the mortgagee. It could only be "re-assigned" to Scammon, from whom and from whose policy it came. The endorsement of it to him and his daughters jointly would not have been a "re-assignment" at all, and would have assumed to give the daughters money which did not belong to them. So far as the daughters are concerned, no policy of insurance was ever furnished which would by the terms of the mortgage, in case of election by the mortgagee not to collect, have become re-assignable to them. Re-assignment *to* them presupposes an original assignment *by* them of a policy owned by them, and there was none. There being no such policy, there was no policy in which they had an interest, or whose proceeds they could require either to be re-assigned or to be applied on their debt.

It was contended below, that receiving the draft and endorsing it to Scammon, was an act of the mortgagee which made it in fact collect the money, and that *ipso facto*, the debt was so far reduced. As we have said, if that were so, the daughters would then owe to the father at least two-thirds of the amount, and equity would, under the circumstances, substitute the mortgagee for him, and so, in the end, give them a credit of only one-third of the amount. But the endorsement by the mortgagee, was not a collection; it was the only possible way under the form of the policy for the mortgagee to exercise its election, not to collect, but to re-assign. There was nothing

re-assignable except the draft, and nothing was done by the mortgagee except to re-assign that. Our case is much stronger than that of the mortgagee in

Gordon v. *Ware Savings Bank*, 115 Mass., 588.

There the mortgagee actually collected the insurance money and endorsed the amount, as a credit, upon the security. More than five months thereafter, at the request of the mortgagor, it erased the credit and handed the money to him, and he used it in restoring the building. A second mortgagee claimed that as against him the first mortgage was reduced by the amount of the insurance money. There was an actual handling and retention of money by the mortgagee, and not, as in this case, a surrender of the draft—not a collection, but the exact reverse. The party claiming the credit was not a co-obligor, himself owing as between him and the others, a *pro rata* share of the debt, and as to the mortgagee the whole of the debt, but he was a subsequent mortgagee, entitled to the benefit, as against all others, of any payment by the mortgagor of the first mortgage. The court held that they saw no reason why the mortgagor and first mortgagee could not, as they did, treat the endorsement as a mistake, or as unauthorized, and while holding that the second mortgagee had no legal right in the insurance, it held that the fact that the money went back upon the land, made his claim not only legally unfounded, but inequitable also.

Cases can be imagined in which sureties or subsequent grantees would be entitled to the benefit of a collateral security given by the principal debtor and released, as was done in this case. Indeed the reversioners

in this case have been treated exactly as though they were *sureties*, and the fact that they are *original joint obligors*, and that nothing in fact or in law required the mortgagee to treat them otherwise, has been disregarded. There is a coloring put on the case by the other side, and even in the opinion of the court, arising out of the domestic relations of the life tenant and reversioners which has no business in it. If the life tenant is to be regarded as performing a parental duty to the reversioners up to the point of getting the insurance money for them, they do not make a kind or filial return to him in exposing the transaction which the mortgagee chose not to prosecute as an embezzlement. But in fact the domestic relations of these parties have nothing to do with the questions at issue. The holders of the reversionary interest are original debtors and are not sureties or subsequent grantees or mortgagees, and they have none of the equities of such persons, and we submit to the court that their express covenant as joint obligors in the mortgage to the appellant to pay the whole debt can be satisfied by nothing less than the payment of the whole debt, and not by a credit arising from the exercise by the mortgagee of its right to waive the benefit of a collateral security not furnished by them and on which they had no right to rely to help to relieve their estate.

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1886.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Appellant,*
vs.
JONATHAN YOUNG SCAMMON, FLORENCE A. D. REED AND ARIANNA E. SCAMMON ET AL., *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLEES FLORENCE A. D. REED AND ARIANNA E. SCAMMON.

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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief and Argument for Appellees Florence A. D. Reed and Arianna E. Scammon.

STATEMENT.

On September 10, 1866, J. Young Scammon and his daughters, Florence A. D. Reed, and Arianna E. Scammon, the appellees, joined in the execution of a mortgage upon lot five (5) in block eleven (11) in Fort Dearborn Addition to Chicago, to appellant, the Connecticut Mutual Life Insurance Company, to secure the payment of the principal sum of $30,000, and interest thereon at 8 per cent. per annum, which principal sum became due and payable September 10, 1871. Said lot 5 was originally owned in her separate right by Mary Ann H. D. Scammon, the deceased wife of J. Young Scammon. Upon her death the title to said lot passed

by descent to her three children, Charles T. Scammon, Florence A. D. Reed and Arianna E. Scammon, subject to the life estate of their father, J. Young Scammon. Subsequently, but prior to the execution of the mortgage in question, J. Young Scammon acquired the interest of his son, Charles T. Scammon, and at the date of the mortgage was the owner in fee of an undivided one third interest in the premises.

On September 10, 1867, a partition of said mortgaged premises was made, and a partition deed duly executed and recorded between J. Young Scammon and his daughters, by which the south one third of said lot was set off to Mr. Scammon, as the parcel in which he should thereafter have an estate in fee, and was at his request conveyed to the Marine Company of Chicago, and the north two thirds of said lot was set off and conveyed to said Florence A. D. Reed and Arianna E. Scammon as the part in which they should thereafter have an estate in fee, subject to the life estate of their father, said J. Young Scammon. Concurrently with the making of this partition the south one third of said lot, so set off to Mr. Scammon, was released by appellant from the lien of the mortgage, and the sum of ten thousand dollars credited thereon, so that thereafter Mr. Scammon's interest in the portion of said lot remaining covered by the mortgage consisted of a life estate only.

No part of the money secured by said mortgage was received by either Florence A. D. Reed or Arianna E. Scammon, but the whole amount was received by J. Young Scammon who, in 1866 or 1867, erected a building on the north two thirds of said lot, and thereafter and until the great fire in October, A. D. 1871, collected the rents therefrom, amounting to some $4,000 per annum, and had, as life tenant, the general management and care of the premises and attended to the payment of interest on said incumbrance, taxes, insurance and other charges against said premises. Said mortgage contained the following insurance clause, viz.:

"And further that they, their heirs, executors, and administrators, shall and will at all times hereafter, until

"principal sum of money, and all arrearages of interest "thereon shall be fully paid, keep all the buildings (out- "houses excepted) now situate, or that may hereafter be "erected upon said premises, fully insured against loss or "damage by fire, in some good and responsible insurance "company or companies (satisfactory to the said party of "the second part, it successors or assigns, or its or their au- "thorized agent), in the fair insurable value of such build- "ings, and will legally and properly assign and deliver "to the said party of the second part, its successors or "assigns, each, all and every the policies of insurance "therefor, as soon as and whenever such insurance "shall be effected, and will also deliver to said party "of the second part, its successors or assigns, or its or their "authorized agent, all premiums or renewal certificates re- "ceived for the payment of the premium upon such policy "or policies of insurance as soon as and whenever such cer- "tificates shall be issued, and in default of so doing, the said "party of the second part, its successors or assigns, at its or "their option may effect such insurance, in its or their name "or names or otherwise, and the premium money paid "therefor shall be a charge upon said premises, and shall be "secured by this instrument in the same manner as the said "principal sum of money above mentioned is secured, and "such premium money shall be paid by said parties of the "first part, their heirs and legal representatives, to said "party of the second part, its successors or assigns on "demand and may be collected at any and all times after "the same shall have been paid with interest thereon at "the rate of ten per cent. per annum from the time the same "shall be advanced, and *the said party of the second part, its "successors or assigns, shall hold each and all such policies of in- "surance so received by assignment or otherwise as collateral "and additional security for said principal sum of money and "interest, and shall have the right to collect and receive any and "all money and sums of money that may at any time become "collectible or receivable upon each, all and every of such poli- "cies of insurance, and apply the same when received in the sam*

"*manner, as far as possible, as is hereinafter provided for in case* "*of a sale of said above described premises under the power of* "*sale hereinafter contained.* But nothing herein contained "shall be construed as requiring the said party of the sec- "ond part, its successors or assigns, to incur any expense or "make any effort to collect any money that may become "due on any such policies of insurance, but if it or they "shall elect not to collect the same they shall make such "election within a reasonable time after such money shall "become collectable, and on demand of said parties of the "first part or their legal representatives, shall thereupon "forthwith after making such election not to collect, re-as- "sign and deliver such policy or policies of insurance to "said parties of the first part, their executors, administra- "tors or assigns."

In accordance with the foregoing provision of the mortgage, insurance was procured on the building on said mortgaged premises, for the benefit of said mortgagee, and at the time of the fire, in 1871, when said building was destroyed, the mortgagee held a policy of insurance on said building in the Liverpool and London and Globe Insurance Company for $15,000, which had been delivered to it as collateral security for the payment of the mortgage indebtedness. This policy run in the name of J. Young Scammon but contained a clause making the loss payable to the Connecticut Mutual Life Insurance Company, the mortgagee, as its interest should appear. The loss under this policy was shortly after the fire adjusted, and a draft for $15,000, the payment of said loss, drawn on said fire insurance company by its Chicago agents, to the order of the Connecticut Mutual Life Insurance Company, — which draft was in words and figures as follows:

"$15,000.00" "CHICAGO, December 16, 1871."

[2 cent int. revenue stamp.]

"LIVERPOOL & LONDON & GLOBE INSURANCE CO., New York:"

"Pay to the order of the Connecticut Mutual Life Insur- "ance Co. fifteen thousand dollars, value received, and

"charge the same to account of loss under policy No. 1,290,-
"633."
"No. 152 c'k 52."

"ARTHUR PELL, Ag't, Sec'y."
"A. M. WARREN, Gen. Agt."

And was afterward indorsed as follows:
"No. 43.
"Paid 8 Jan., 1872, Chicago loss, 5,802. Account by
"cheque for $15,000, favor Am. Ex'g Nat'l Bank.
"Pay J. Young Scammon or order.

"JACOB L. GREENE, Sec'y."

"J. YOUNG SCAMMON:
"Pay to the order of the American Exchange Nat'l Bank,
"New York City.

"SAM. S. ROGERS, Sec'y."

"Received payment,
"AMERICAN EXCHANGE NAT'L BANK."

This draft was delivered to J. Young Scammon by the agent of the fire insurance company and by Scammon delivered to Anson Sperry, the financial agent in Chicago of the Connecticut Mutual Life Insurance Company, who forwarded the same to said company at Hartford, together with a letter or written application from Mr. Scammon to said company, requesting that the money obtained upon this policy of insurance be repaid to him for the purpose of being used in rebuilding on the mortgaged premises. (Record, page 51.) In due time the draft was returned to Sperry with the indorsement of the secretary of said Connecticut Mutual Life Insurance Company, thereon making the same payable to Mr. Scammon, with authority to said Sperry to deposit said insurance money in such bank as should be selected by Scammon and approved by him, subject to the conditions of the following written agreement which was executed in duplicate between said company and Mr. Scammon.

"Memorandum of agreement made and entered into this

"fifth day of January A. D. 1872, between the Connecticut "Mutual Life Insurance Company, a corporation subsisting "by the laws of the State of Connecticut and located and "doing business in the city of Hartford in the State of Con- "necticut, of the one part, and J. Young Scammon of the "city of Chicago, in the county of Cook and State of Illinois "of the other part, witnesseth: That whereas the said party "of the second part did on the tenth day of September A. "D. 1866 make, execute and deliver to the said party of the "first part a certain indenture of mortgage, bearing date on "that day, on the following described premises, situate and "being in the city of Chicago aforesaid, to-wit: lot number "five (5) in block number eleven (11) in Fort Dearborn ad- "dition to Chicago, for the purpose of securing the payment "of the certain bond or obligation of the said party of the "second part bearing even date with said mortgage, in the "penal sum of sixty thousand dollars, conditioned for the "payment to said party of the first part of the sum of thirt- "thousand dollars ($30,000) on the tenth day of Sep- "tember A. D. 1871, with interest as therein stated "on which said mortgage has been paid ten thousand dol- "lars of principal: and whereas, the building on said prem- "ises known as No. 90, Michigan Avenue, in said city of "Chicago, *were* insured in the following companies and in "the following amounts, to wit: the Liverpool and London "and Globe, in the sum of fifteen thousand dollars, which "said policies of insurance were held by said party of the "first part as collateral security for the payment of said "loan, any loss on said policies to be paid to said party of "the first part; and whereas, said building has been de- "stroyed by fire, and the insurance money to be received "on said policy or policies are subject to be paid to said "party of the first part, in accordance with the conditions "of said mortgage: and whereas, said party of the second "part desires said party of the first part to permit and suf- "fer said insurance money to be used in and upon said "mortgaged premises in the reconstruction of said building "or buildings thereon, and said first party is willing

"to have said insurance money so used upon the "terms and conditions hereinafter set forth and to "assist in the collection and receipt thereof, by "said second party from said fire insurance company "or companies for the purposes aforesaid; it is therefore "mutually agreed by and between the parties hereto that "said party of the first part waives, except as hereinafter "provided, its right to apply on said indebtedness the moneys "that may be received on said policy or policies of insur- "ance, and that any and all such sum or sums of money as "shall be so collected from said fire insurance company or "companies by either of the parties to this instrument shall "be deposited in such bank or banks as shall be selected by "the party of the second part, and assented to by the said "first party, to the credit and at the risk of said party of the "second part, to be used in the erection of said building or "buildings on said mortgaged premises. That said money "shall be paid out and expended in the erection of said "building or buildings from time to time on the "drafts or checks of said party of the second part, "countersigned by the said party of the first part, "or its duly authorized agent or attorney, until said insur- "ance money is fully expended, as herein provided, on said "mortgaged premises. That said drafts or checks shall be so "countersigned upon the presentation thereof to said party of "the first part, its duly authorized agent or attorney, to- "gether with the certificate of a competent and credible "architect; that the amount of said check or draft, together "with all previous checks or drafts drawn or paid out on "said account, has been actually expended in and upon "said mortgaged premises in the permanent improvements "thereon, and that the work and material for which the "amounts so expended have been paid, are fully worth such "sum. If, however, said buildings are being constructed "without the supervision of an architect the affidavit of said "party of the second part to said facts may at the option of "said first party be received in lieu of said architect's "certificate, and it is further understood and agreed that

"so soon as said building or buildings shall be in "a situation to be insured said party of the second part "shall cause the same to be insured in some good and re- "sponsible insurance company in the fair insurable value "thereof, and assign and deliver the same to said party of "the second part as soon as said building shall become so "insurable, all the provisions contained in said above de- "scribed mortgage shall apply to said insurance and said "conditions are hereby made a part of this agreement. It "is also expressly understood that any receipt or acknowl- "edgment given by said party of the first part, either "alone or jointly with others, to any such insurance "company or companies for the purposes aforesaid of "facilitating the collection by said second party "any insurance money intended to be placed back "on said mortgaged premises as aforesaid, shall not be con- "strued as a collection of said money by said first party, "under the conditions of said mortgage wherein and "whereby it is provided that said first party may collect "and apply such insurance money upon the indebtedness "secured, to be paid thereby, but merely as enabling said "second party to collect said insurance moneys, said moneys "are not to be so applied, and said mortgage shall remain "a lien on said martgaged premises for the full amount of "the principal money mentioned in the said bond, with "the interest thereon, as if said moneys had never been "collected. It is also further expressly understood and "agreed that said insurance money shall be expended "on said mortgaged premises as above provided with all rea- "sonable and proper dispatch, and that in the event that for "any cause, whether the death or absence of any party, or "parties to this agreement, or any other cause, said moneys "shall not have been so expended within six months from "the date hereof, then this agreement of waived shall there- "upon become thenceforth null and of no effect, and the "right of said second party to use and expend said moneys "shall thereupon cease, and said first party shall have the "right to draw from the said bank or banks upon its own

"check or checks or that of its authorized agent, said insur-
"ance moneys or so much thereof as shall not then have been
"actually expended as provided in this agreement, and ap-
"ply the same in payment *pro tanto* of the indebtedness se-
"cured by said mortgage. And such check or checks of
"said first party or its agent as aforesaid, drawn at any
"time after the expiration of six months from the date
"hereof, shall be a full discharge and acquittance to said
"bank or banks for any moneys paid thereon.

"It is expressly agreed that time shall be of the essence
"of this agreement in all its parts and that said agreement
"shall be binding upon the heirs, executors, administrators,
"successors and assigns of the respective parties."

"In witness whereof the said parties have hereunto set
"their hands and seals the day and year first above writ-
"ten."

Mr. Scammon, on the execution of this agreement, designated the Marine Company of Chicago as the bank in which he wished the money deposited, and thereupon Mr. Sperry, on the 5th day of January, 1872, deposited said draft with the Marine Company in strict accordance with the terms of said agreement, delivering at the same time to the officers of said institution a copy of said agreement, showing the terms upon which said money should be withdrawn from deposit, viz.: upon the checks of said Scammon countersigned by appellant or its duly authorized agent or attorney, or upon the check of appellant at any time after six months, provided any portion of said money had not then been so drawn out. No such checks were countersigned by appellant nor was the money or any part of it drawn out of said bank or used in re-building on said premises in accordance with the terms of said agreement, but so far as the record shows said sum of $15,000 as between complainant and the bank still remains as a deposit in said bank, subject to the check of appellant. (Record, page 52.)

This agreement and the deposit of the insurance money thereunder were made without the knowledge or consent of Florence A. D. Reed and Arianna E. Scammon. The build-

ing was not rebuilt, and the mortgaged premises at the date of the filing of the bill herein, and of the entry of the decree, remained unimproved.

On June 23, 1876, appellant filed their bill to foreclose said mortgage, alleging that the principal sum of $20,000, and interest thereon, from September 10, 1873, was due and unpaid.

The appellees, Florence A. D. Reed, and Arianna E. Scammon answered said bill, alleging that said money secured by said mortgage, was loaned and advanced to their father, J. Young Scammon, and for the benefit of his life estate; that no part of said money was paid to them or either of them, and that they received no benefit therefrom; that they joined in the execution of the mortgage to enable their father to obtain the money to improve said premises in order that he, as owner of the life estate, might derive an income therefrom; that said insurance clause was inserted in said mortgage for their benefit as well as for the benefit of appellant; that after the execution of said mortgage and the erection of the buildings on said premises, and up to the time of the great fire of October, 1871, J. Young Scammon collected all the rents therefrom, and out of the proceeds thereof paid the taxes and assessments on said premises, and kept said buildings insured for the benefit of the mortgage indebtedness. That at the time of the fire in 1871, the building, which was totally destroyed, was insured for $15,000, and the policy of insurance was then held by appellant, as collateral security for the payment of the mortgage indebtedness, and the loss under said policy was payable to appellant; which insurance appellees allege had been procured by J. Young Scammon, under the provisions and in conformity to the terms of said mortgage, and paid for out of the rents of said premises.

That on or about the 5th day of January, 1872, appellant collected or caused to be collected on said policy of insurance the sum of $15,000, which amount appellees insisted was, as to them, a payment *pro tanto* of said mortgage indebtedness. That appellant, without the knowledge, authority or consent of appellees, entered into the aforesaid

agreement with their father, who was then a person of large reputed wealth and unlimited credit, under which the money was diverted from the purpose specified in the mortgage and deposited with the Marine Company, and claimed that appellant, in consenting to such diversion of said insurance moneys, released appellees and their estate from the lien of the mortgage to that extent. (Record, page 18.)

In due course a hearing was had in the court below on the issues presented by this answer, and on November 2, 1881, an opinion filed in said court finding that, as to appellees and their estate, said insurance moneys should be credited as a payment *pro tanto* on said mortgage indebtedness, and directing a decree to be entered in accordance with such finding. (Record, page 81.)

On October 2, 1882, the decree was entered, and from that decree appellant has appealed to this court.

BRIEF AND ARGUMENT.

I.

THE INSURANCE POLICY, HELD BY APPELLANT AT THE TIME OF THE DESTRUCTION OF THE BUILDING ON THE MORTGAGED PREMISES, WAS A COLLATERAL SECURITY FOR THE JOINT DEBT OF THE MORTGAGORS, FURNISHED UNDER AND IN COMPLIANCE WITH THE PROVISIONS OF THE MORTGAGE, AND THE OBLIGATION WAS IMPERATIVE ON APPELLANT TO APPLY THE FUND ARISING THEREFROM TO THE PAYMENT OF THE JOINT DEBT IN THE MANNER PROVIDED BY THE MORTGAGE.

The mortgage and bond on which the foreclosure proceedings in this case were had was executed jointly by J. Young Scammon, the owner of the life estate, and his daughters, the appellees, the owners of the fee in the mortgaged premises, and contained a joint covenant that the mortgagors would *keep the buildings* upon said mortgaged premises insured in the fair insurable value thereof, and would assign and deliver the policies of insurance to the mortgagee; and it was further in said mortgage provided

"that said mortgagee "shall hold each and all such policies "of insurance so received, by assignment or otherwise, as "collateral and additional security for said principal sum of "money, and interest, and shall have the right to collect and "receive any and all money or sums of money that may at "any time become collectible or recoverable upon each, all "and every of such policies of insurance, and apply the same "when received in the same manner, as far as possible, as "is hereinafter provided, in case of a sale of said above de-"scribed premises under the power of sale hereinafter con-"tained."

This mortgage also contained a provision, that in case of default on the part of the mortgagors in procuring such insurance, said mortgagees might effect such insurance in its own name, or otherwise, and that the premiums paid therefor should be a charge upon said mortgaged premises, and secured by said mortgage in the same manner as said principal indebtedness.

Insurance was procured on the buildings and delivered to appellant, under which $15,000 was collected, and the first question upon which issue is taken by appellant and appellees is as to the character of this insurance, and the rights of the parties in respect to the application of the fund received therefrom.

On behalf of the appellees, Florence A. D. Reed and Arianna E. Scammon, we insist that this insurance was furnished as a collateral security for the joint debt of the mortgagors, and as a compliance by the mortgagors with the covenants of the mortgage, and must be applied for the common benefit of the mortgagors in the payment of the joint debt.

That the insurance policy was furnished as a collateral security under the terms of the mortgage, and was so held by the mortgagee at the time of the destruction of the buildings on the mortgaged premises is conceded by appellant.

In the agreement executed on the fifth day of January, 1872, by appellant and J. Young Scammon, under which the money received on account of such insurance was deposited with the Marine Company, after reciting the making

of the loan and the execution of the mortgage, it is expressly declared that the building on said mortgaged premises was insured by a policy in the Liverpool, London and Globe "Insurance Company in the sum of $15,000, and that "*said* "*policy of insurance was held by said party of the first part* (appellant) *as collateral security for the payment of said loan,* "any loss on said policy to be paid to said party of the first "part," and that "the insurance moneys to be received on "said policy or policies are subject to be paid to said party "of the first part *in accordance with the conditions of said mort-* "*gage*" (Record, P. 25).

Appellant and Scammon both understood that the insurance was a collateral security, furnished in compliance with the requirements of the mortgage, and that their rights and obligations in reference to the disposition of the fund derived therefrom, depended upon and were fixed by the mortgage, and they treated it and dealt with it in accordance with this understanding. In consenting to the deposit of the insurance moneys with the Marine Company, appellant recognized the fact that such insurance moneys were being diverted from the purpose for which they were received and held by it.

In that agreement it expressly "*waives* (except as therein- "after provided) *its right to apply on said* (mortgage) *indebt-* "*edness the moneys that may be received on said policy or policies* "of insurance," and provided "that in the event that for "any cause * * * * said moneys shall not have been "so expended (in erecting new buildings) within six months "from the date hereof, then *this agreement of waiver* shall "thereupon become thenceforth null and of no effect, and "the right of said second party to use and expend said "moneys shall thereupon cease, and said first party (ap- "pellant) shall have the right to draw from said bank or "banks, upon its own check or checks, or that of its author- "ized agent, said insurance moneys, or so much thereof *as* "*shall not have been actually expended* as provided in this "agreement, and apply the same in payment *pro tanto* of "the indebtedness secured by said mortgage."

(Record, pp. 25 and 26).

It is well settled law that a creditor holds collateral securities as the agent or trustee of his debtor, and that whenever he undertakes to transfer them without the authority of the debtor the law will hold that he has elected to take them for what appears to be due on their face in satisfaction to that extent of the principal debt.

Hawks v. *Hinchliff*, 17 Barb. 492.
Sparhawk v. *Drexel*, 12 Bank Reg. 450.
Cocke v. *Chaney*, 14 Ala. 65.
Ins. Company v. *Smith*, 11 Pa. State, 120.
King v. *Hutchins*, 28 N. H. 561.

But it is contended that this insurance was furnished by Scammon alone, one of the joint mortgagors, and therefore covered only his interest in the buildings, and that he alone was entitled to the benefits arising therefrom, and that appellees had no concern with it or interest therein.

This position is not tenable—

1. Because the insurance was a part of the original security covenanted in the mortgage to be furnished, for the joint benefit of and to secure the joint debt of all the mortgagors, and must in law be treated as furnished by all for the purposes specified in the mortgage.

If one of several joint convenantors perform the act covenated for, it is in law a performance by all, for the benefit of all, and no breach can be alleged by the covenantee.

The mortgage in this case fixed and determined the rights of all the parties in respect to all the securities furnished or to be furnished under its provisions, for the repayment the indebtedness for which the mortgagors were jointly liable. The insurance to be procured on the buildings standing on the mortgaged premises was specifically pledged equally with the estates of the mortgagors for the payment of the debt. The covenant in the mortgage to keep the buildings on the mortgaged premises insured for the benefit of the mortgage run with the land, and operated to assign in equity to the mortgagee any insurance when and as soon as procured by

the mortgagors or either of them, and appropriate the fund arising therefrom to the mortgagee for the purpose of being applied in payment of the mortgage debt.

In re Sands Ale Brewing Co., 3 Biss. 175.
Thomas v. *Vankapff*, 6 Gil. & J. 372.
Caswell v. *Brooklyn, F. Ins Co.*, 39 Barb. 228.
Jones on Mortgages, Sec. 400–404.
Carter v. *Rockett*, 8 Paige, 437.
Nichols v. *Baxter*, 5 R. H. 491.

In this case not only the covenant in the mortgage, but the provision in the policy making the loss payable to the mortgagee, operated to assign the policy in its inception to the mortgagee.

Carpenter v. *Washington Ins. Co.*, 16 Pet. 495.
Motley v. *Mf's. Ins. Co.*, 29 Me. 337.
Tilton v. *Merchants M. Ins. Co.*, 9 Barb. 590.
Franklin v. *Nat. Ins. Co.*, 43 Mo. 491.
Nat. Fire Ins. Co. v. *Crane*, 16 Md. 260.

Such being the case it was a matter of little consequence in whose name the policy was procured, so far as the rights and duty of the mortgagee is concerned, in reference to the application of the insurance fund. Even if the position was maintainable, that the insurance covered only Scammon's interest in the mortgaged premises, the fund, equally with his estate, stood pledged for the debt of all the mortgagors, and it could not lawfully be diverted from that purpose by the mortgagee without the consent of the other mortgagors, any more than his estate could be released from the lien of the mortage without their consent.

But the insurance policy in this case did not in terms purport to insure the separate interest of Mr. Scammon in the mortgaged premises, or in the buildings thereon, but insured the buildings as an entirety, and was such an insurance as came clearly within the provisions of the mortgage which required the mortgagors to "keep the buildings insured," etc. It was entirely immaterial to appellant whether the insurance was effected by one or by all the

mortgagors, provided it covered the buildings and was assigned to the appellant as required by the mortgage.

The act covenanted for was performed by one of the joint covenantors, and that was in law a performance by all so far as the covenantee is concerned, and its right to allege a breach of the covenant.

The covenant to pay interest and taxes was a joint covenant entered into by appellees as well as by Scammon. The interest and taxes were in fact paid by Scammon alone; as well might appellant claim a breach of those covenants, because not performed by all the covenantors as of the covenant to insure because the insurance was procured by Scammon alone, and as well insist that because Scammon alone paid the interest and taxes, he alone was concerned in the money so expended by him, and that appellant could at its option refund it to him, as that he alone was concerned in the proceeds of this insurance, because procured by him, and that appellant could, if it saw fit, pay over such proceeds to him.

2. Treated as a question of insurance law simply, Scammon had an undoubted right to effect insurance on the buildings in his own name, and such insurance, if so intended, would inure to the benefit of appellees as well as himself.

It is well settled law that any one having any legal interest in property can insure it as his own, and in his own name, without specifying the nature of his interest, and the insurance will, if so intended, cover not only his individual interest, but the interests of others for whom he acted.

Howard Ins. Co. v. *Chase*, 5 How. 509.
Blanchard v. *Wait*, 28 Me. 39.
Finney v. *Fairhaven Ins. Co.*, 5 Metc. 192.
Wood on Insurance, 507, and cases cited.
Hagedorn v. *Oliverson*, 2 Manl. & Sel. 485.
Wellenberger v. *Beacom*, 9 Penn. St. 198.
Murray v. *Columbia Ins. Co.*, 11 Johns. 302.
Graves v. *Ins. Co.*, 2 Cranch, 419.

Manhattan Ins. Co. v. *Webster*, 59 Pa. St. 227.
Keith v. *Globe Ins. Co.*, 52 Ill. 518.

The form of the policy is immaterial, provided the insurance company has not been deceived.

The question as to who is entitled to the benefit of an insurance policy is one of fact, depending on the purposes for which the insurance was affected.

Fleming v. *Ins. Co.*, 4 Wharton, 59.
2 Am. Leading Cases, 797.
DeBolle v. *Penn. Ins. Co.*, 4 Wharton, 68.
Augusta Ins. Co. v. *Abbott*, 12 Md. 348.
Steele v. *Ins. Co.*, 5 Harris, 290.

The intention of the parties must control, and this intention is to be gathered, not only from the language employed in the policy, but also from the circumstances under which it was obtained, and if it appears that the intention was to insure for the benefit of another interested party, as well as himself, that intention will not be defeated because the usual or customary words are not employed to express such intent.

To effectuate such intention evidence is properly receivable *aliunde* the policy to explain the character of the interest insured.

Howard Ins. Co. v. *Chase*, *supra.*
Crowley v. *Cohen*, 3 B. & Ald. 478.
Updegraff v. *Ins. Co.*, 9 Harris, 513.

The contract of insurance, like other contracts, may be effected by the agency of a third party, and when a person has the custody, care or possession of property for another, he may insure it in his own name for the benefit of the owners, and such insurance will inure to the owners of the property upon a ratification or adoption of the policy, even after a loss has occurred.

Wood on Insurance, 507.

Thus it has been held that a superintendent of a manufacturing company may cover buildings and the machinery of his principal by a policy in his own name.

2 Am. Leading Cases, 844.

Where the agent procuring insurance has received the fund, it is held sufficient, in an action against him by the owner of the property insured for money had and received, to prove that the defendant constituted himself the representative of the interest insured as agent of the owner, and that the latter ratified the act before or after the loss accrued.

Wellenberger v. *Beacom*, 7 Penn. St. 198.

And where the party, so procuring insurance, is interested with others in the property insured, it is sufficient to show that the defendant regarded himself as the representative of the owners and acted for the protection of their interests as well as his own.

Harris v. *York Mut. Ins. Co.*, 14 Wright, 341.

In the latter case the husband insured the buildings on his wife's land, of which he was in possession, and Woodward, C. J., in delivering the opinion of the court, said, that aside from the interest which the husband clearly had in the protection of the property, he was an agent in possession who might insure in his own name for the benefit of the owner.

In the case now before the court Scammon was in possession and control of the mortgaged premises, and was the representative of the property, so far as the management thereof was concerned. He received all the rents amounting to some $4,000 per annum, paid the interest on the incumbrance, the taxes and insurance, and until the buildings were destroyed fully performed all the covenants in the mortgage contract which he had entered into jointly with appellees. In performing those covenants he assumed to act and did act for all the covenantors, and was the recognized representative and agent of the property for the purposes specified. He dealt with the property as an entirety and in no instance assumed to represent his individual and separate interest therein.

3. It was Scammon's legal duty, as life tenant of the

mortgaged premises, to procure and pay for out of the rents of which he was in receipt, the insurance covenanted in the mortgage to be furnished.

The law is well settled that it is the duty of a tenant for life to pay out of the rents and profits the taxes, the interest on incumbrances on the property in his possession as life tenant, and all necessary and proper charges connected with the care, management and preservation of the estate.

Outcalt v. *Appleby*, 36 N. Y. Eq. 80.
Garland v. *Garland*, 73 Me. 98,
Holcomb v. *Holcomb's Ex'rs*, 27 N. Y. Eq. and cases cited.
Peirce v. *Burroughs*, 58 N. H. 304.

The courts have universally held that the taxes must be paid and the interest on incumbrances kept down by the life tenant, but what in other respects are reasonable and proper charges upon the life tenant, and what are his specific duties with regard to the estate, depend always upon the facts in each particular case, and the situation, condition and nature of the property.

In the case of *Peirce* v. *Burroughs*, *supra*, a life estate is said by the court to be a "net use and income not including "a diminution of the capital by the diversion of it to the "payment of any part of the ordinary expenses of its preser- "vation. The preservation of the capital by the shingling "of house, by payment of taxes or interest on an incum- "brance, or by any other performance of a life tenant's duty "of abstaining from permissive waste, is beneficial to the "remainder man, but he is chargeable with no part of the ex- "pense of the performance of that duty. The performance "of that duty by the life tenant is the right of the remain- "der man." If the neglect to preserve the buildings from deterioration from the action of the elements as suggested above by shingling the roof would be construed as permissive waste, surely the neglect to provide by insurance against its total destruction by fire would be construed in like manner. Particularly is this true at this time when the

keeping of buildings in large cities insured is universally regarded as much a part of good management, as keeping them painted or in any other manner protected from the weather.

Whether, however, the keeping of buildings insured is or is not regarded as a necessary part of good management of an estate, would seem to be conclusively settled in this case by Scammon's act in insuring the property. If good management required the insurance of his interest as life tenant, it certainly required the insuring of the interests of all the parties; and he was bound in this respect to take as good care of the interests of appellees as of his own.

Again, the mortgage in this case contained a covenant that the mortgagors would at all times keep the buildings on the mortgaged premises insured, and in default thereof the mortgagee was authorized to effect insurance, and the money that should be expended therefor was by the terms of the mortgage made a charge upon the premises, secured in the same manner as the principal debt.

The reason of the rule that a life tenant shall to the extent of the rents received by him pay the taxes on the property and keep down the interest on incumbrances, is said to be that the remainder man may receive the property with no more burdens upon it than when received by the life tenant. In the case of *Pierce* v. *Burroughs, supra*, the court say: "The preservation of the capital without expense to "the remainder man is as much his right as the use, with-"out payment of rent, is the right of the tenant for life."

The effect of not paying the interest on an incumbrance is to increase by accumulations of interest the amount of the incumbrance.

The effect of neglect to furnish the insurance under the terms of this mortgage is precisely the same, and no reason can be assigned for requiring a life tenant to pay the interest on an incumbrance, which would not apply with equal force to the obligation upon Scammon to furnish the insurance covenanted to be procured in this mortgage. Nay with far greater force; for the effect of non-payment of

interest might or might not be a cause of foreclosure under mortgages generally, while in this case, had no insurance been furnished, such foreclosure would have been under the terms of the mortgage entirely at the option of the mortgagee. (Record p. 60.)

4. If the proposition contended for by appellant be conceded, that J. Young Scammon, as one of the joint mortgagors, procured the insurance upon the buildings standing on the mortgaged premises, intending thereby to protect only his interest, and delivered the policy to the mortgagee as a collateral security, yet we insist, under well settled rules of law, the mortgagee could not, without the consent of the other joint mortgagees, surrender the collateral security to Scammon or divert the same from the purpose for which it was received, viz., to be applied to the payment of the mortgage debt.

In this case the mortgagors were *joint covenantors* as to all the covenants contained in the mortgage.

A covenant by two or more is joint as to them if not declared to be several.

Philadelphia, etc., v. *Reeves*, 48 Pa. St. 472.

In the mortgage, among other things, the mortgagors covenant that they will well and truly pay unto the mortgagee the principal sum of money mentioned in the condition of their bond, and interest thereon; that they will not suffer the mortgaged premises to be sold for taxes; that they will at all times, until said principal sum and interest thereon shall be fully paid, keep all the buildings situate, or that should thereafter be erected upon said premises, fully insured, and assign and deliver the policies of insurance therefor to the mortgagee; that the mortgagee shall hold each and all such policies of insurance as collateral and additional security for the principal sum and interest due on the mortgage. (Record p. 59.)

As to all these, and also as to the joint bond executed by the mortgagors for the payment of the mortgage indebtedness to appellant, the mortgagors sustained a dual relation;

they were each principals, and at the same time, *were sureties for each other for the due performance of the covenants.*

Platt on Covenants, 4th Ed. 536, note.
Comings v. *Little*, 24 Pick. 67.

Each principal obligor in a joint bond is as between them a surety for his co-obligor.

Brandt on Surety, Sec. 25.
Hatch v. *Norris*, 36 Me. 419.
Cox v. *Thomas, Admr.*, 9 Gratt. (Va.), 302.
Morrow's Admr., v. *Peyton's Admr.*, 8 Leigh (Ga.), 54.
Hall v. *Hall*, 34 Ind. 314.

In addition to their legal relation as sureties, the appellees in this case had pledged their estate for the benefit of the life estate of their co-mortgagor, J. Young Scammon, and without receiving any immediate benefit on account of the money obtained on the mortgage, and without deriving any advantage therefrom during the continuance of the life estate.

Their estate stood in the relation of surety for the performance by their joint covenantor, as well as themselves, of the covenants in the mortgage.

"When property of any kind is mortgaged or pledged by the owner to answer for the debt, default or miscarriage of another person, such property occupies the position of a surety or guarantor, and anything which would discharge an individual surety or guarantor who was personally liable, will under similar circumstances discharge such property."

Brandt on Surety, Sec 21.
Robinson v. *Gee*, 1 Vesey Sr. 251.
Royal Canadian Bank v. *Payne*, 19 Grant's Ch. 180.
Christian v. *Brown*, 16 Ia. 130.
Denison v. *Gibson*, 24 Mich. 187.
Joseph v. *Heaton*, 5 Grant's Ch. 636.
Ryan v. *Shawneetown*, 14 Ill. 20.
Lord Herbaton v. *Bennett*, Bentley, Sr., Ch. 356.
Rowan v. *Sharp Rifle Co.* 33 Conn. 1.

Union Bank v. *Govan*, 10 Smds. and Mar. (Miss.) 333.
White v. *Ault*, 19 Ga. 551.
Lowrey v. *McKinney*, 68 Pa. St. 294.
Smith v. *Townsend*, 25 N. Y. 479.
Barnes v. *Mott*, 64 N. Y. 397.

The rights of a person occupying the relation of surety in respect to collaterals held by the creditor are well settled by numerous decisions.

Brandt in his work on Surety and Guarantor at Sec. 384 states the rule to be that a creditor who has effects of the principal in his hands or under his control for the security of the debt, is a trustee for all parties concerned, and if such effects are lost through the negligence, or want of ordinary diligence of the creditor, the surety is discharged to the extent he is injured, the same as if the effects had been lost by the positive act of the creditor.

Sureties are entitled to the benefit of every security which the creditor has against the principal debtor, and whether the surety knows of the existence of the securities is immaterial.

Mahew v. *Crockett*, 2 Swan, 190.
Capel v. *Butler*, 2 Sim. & S. 450.
Newton v. *Charlton*, 10 Hare, 651.
Pearl v. *Deacon*, 24 Bevân, 186.

"It is a well settled principal of equity, that a creditor who has the personal contract of his debtor, with a surety, and who has also, or afterward takes, property from the principal as a pledge or security for the debt, is to hold the property fairly and impartially for the benefit of the surety, as well as himself, and if he parts with it, without the knowledge or against the will of the surety, he shall lose his claim against the surety to the amount of the property so surrendered."

Stewart v. *Davis Ex'rs*, 18 Ind. 74.
Baker v. *Briggs*, 8 Pick. 123.
2. Am. Leading Cases (4th Ed.), 346.

If a creditor has a lien on the property of the principal

for the payment of the debt, and negligently suffers the property to be diverted from that purpose, or relinquishes it to the principal, or if it is lost as a security, the surety is discharged to the extent of the security lost, and this, though the lien was obtained after the surety became bound, and without his knowledge.

Brandt on Surety, Sec. 386.
City Bank v. *Young*, 43 N. H. 457.
Merchants Bank v. *Corderaille*, 4 Robinson (La.), 506.
Bank of Gettysburg v. *Thompson*, 3 Grant Cases (Pa.), 114.

Collaterals deposited by a principal with a creditor for security of a debt for which a surety is liable, can not afterward, without the consent of the surety, be diverted from that purpose.

Donnelly v. *Wilson*, 5 Leigh (Va.), 329.
Mellendy v. *Austin*, 69 Ia. 45.
Brandt on Surety, Sec. 29.

If a creditor has collateral security from a debtor, he must hold the same as well for the security of the creditor as the indemnity of the surety.

Hayes v. *Ward*, 4 Johns. Ch. 130.
Hawks v. *Hinchliff*, 17 Barb. (N. Y.) 492.
Newton v. *Charlton*, 10 Hare, 651.

And it is immaterial whether the surety knew or not that the creditor had taken additional security.

In the case of *Hayes* v. *Ward*, 4 Johns. Ch. 129, the court held where a creditor had taken a mortgage as collateral security for the payment of the debt from the principal debtor, that "the surety, by his very character and relation of "surety, has an interest that the mortgage taken from the "principal debtor should be dealt with in good faith, and "held in trust, not only for the creditor's security but for "the surety's indemnity. A mortgage so taken by the cred-"itor is taken and held in trust, as well for the secondary "interest of the surety as for the more direct and immediate "benefit of the creditor."

So also it was held by the Supreme Court of Illinois that if a creditor, who has taken a mortgage from the principal debtor as a further security for his debt, parts with the mortgaged property without the consent of the surety, the latter can hold him accountable for its full value.

Phares v. *Barbour*, 49 Ill. 370.

II.

1. The receipt by appellant of the draft for $15,000, payable to the order of The Connecticut Mutual Life Insurance Company, and its indorsement thereof, amounted to and was in fact and in law a payment to appellant of that amount upon the mortgage indebtedness, and operated as a satisfaction *pro tanto* of the mortgage, so far as the estate and interest of the appellees, Florence A. D. Reed and Arianna E. Scammon are concerned.

It is well settled that a draft is an assignment of the funds in the hands of the drawee to the payee of the draft, and that such a draft given by a debtor to a creditor, is such an assignment of the funds, and if paid by the drawee is in legal effect the same as payment in money to the creditor.

Edwards on Bills, 43, 45.
Gilligan v. *Myers*, 31 Ill. 525.
Cronise v. *Kellogg*, 20 Ill. 11.
Morrison v. *Smith*, 81 Ill. 221.
Bickford v. *First Nat. Bank*, 42 Ill. 242.
Brown v. *Leckie*, 43 Ill. 497.
Harker v. *Anderson*, 21 Wend. 372.
Johnson v. *Weed*, 9 Johns, 309.
Waite v. *Vose*, 68 Me. 102.
DeLampert v. *Brown*, 28 Ark. 166.
League v. *Waring*, 85 Pa. St. 244.
Hunter v. *Wetsell*, 17 Hun (N. Y.), 135.
Smith v. *Bettger*, 68 Ind. 254.
Spooner v. *Rowland*, 4 Allen (Mass.), 485.
Phœnix Ins. Co. v. *Allen*, 11 Mich. 501.
Cochran v. *Wheeler*, 7 N. H. 202.

Exeter Bank v. *Gordon*, 8 N. H. 66.
Kenniston v. *Avery*, 16 N. H. 117.
McIntyre v. *Kennedy*, 29 Pa. St. 448.
Wheeler v. *Schrader*, 4 R. I. 383.
Kelsey v. *Rasborough*, 2 Rich. (S. C.) 241.
Barette v. *Brown*, 1 Mc. Cord. (S. C.) 449.
Castello v. *Carr*, 2 Hill (S. C.), 528.
Arnold v. *Sprague*, 34 Vt. 402.
Melberg v. *Fisher*, 24 Wis. 607.

The draft given in payment of the insurance actually came into the hands of appellant; it was through the indorsement of its secretary that the money was paid on the draft by the fire insurance company. The property in the draft was in appellant, and the fact that appellant received it from the hands of Mr. Scammon can not change the legal relations of the parties to the fund it was drawn against, as Mr. Scammon had no property in the draft or control over or interest in that fund. It was given to and accepted by appellant as money.

Such being the case, and the mortgage indebtedness being past due, the moment the draft was received by the mortgagee its mortgage became to that extent satisfied.

Jones on Mortgages, Sec. 904–910.

Prouty v. *Eaton*, 41 Barb. 409.

Fisher v. *Otis*, 3 Chand. (Wis.) 83.

The payment of money by a mortgagor it is true may sometimes be held not to be a payment on the mortgage; but in all the cases in which it has been so held, the intention of the parties has been that it should not operate as a payment.

The intention of the parties in this case is evidenced by the mortgage, the instrument under the conditions of which the insurance was procured. That instrument leaves no room for construction as to the intention of the parties as to what application should be made of the money, when received on the policies held under the mortgage.

It is expressly stated in the mortgage that such moneys

when received, are to be applied in the same manner as far as possible, as is provided for in case of a sale of the mortgaged premises under the power of sale contained in the mortgage, viz.: in payment of the principal money and interest due on the mortgage.

No other application of the money was authorized by the terms of the mortgage or by the appellees Florence A. D. Reed and Arianna E. Scammon.

The mortgage having been discharged *pro tanto* by the receipt by appellant of the $15,000 insurance money, could not as against appellees or their estate be revived by any subsequent agreement between appellant and Mr. Scammon.

Bowen v. *Manter*, 33 N. H. 530.
Marvin v. *Vedder*, 5 Cowen, 671.
Largie v. *VanDoren*, 14 N. Y. Eq. 208.
Kellogg v. *Ames*, 41 Barb. 218.
Gardner v. *James*, 7 R. I. 396.

2. By the terms of the agreement between appellant and J. Young Scammon, under which the insurance money was deposited in the Marine bank, appellant retained the dominion over and assumed to control the use which should be made of this insurance fund. It undertook to replace it back on the mortgaged property. It directed that said fund should be paid out from time to time and expended in the erection of a building on said premises, on the checks of J. Young Scammon countersigned by appellant or its authorized agent, and on the presentation of a certificate of a competent architect that the amounts, so checked out, had actually been expended upon said mortgaged premises; and it provided that in the event that for any cause said money should not have been expended within six months from the date of the argreement, then said agreement of *waiver* should thereupon become thenceforth null and of no effect, and that appellant "should have the right to draw from said "bank upon its own check or checks, or that of its author-"ized agent, said insurance moneys, or so much thereof as

"shall not then have been actually expended as provided "in said agreement, and apply the same in payment *pro* "*tanto* of the indebtedness secured by said mortgage"; and it was expressly provided that "time should be of the essence "of the agreement in all its parts."

Rec. p. 25.

There is no evidence in the record that appellant ever insisted on the performance of the agreement by Scammon, or ever countersigned any checks drawn by Scammon, or ever drew its own check after the expiration of six months upon the Marine bank against the money so deposited, which had not, so far as the record shows, been drawn out in accordance with said agreement.

Now we contend that appellant had no right under any circumstances as against appellees to make such an agreement. That neither under the provisions of the mortgage nor by the common law could appellant as mortgagee, or J. Young Scammon as owner of the life estate, lawfully convert said insurance money into real estate by applying the same to re-building upon the premises, without the consent of appellees, the owners of the fee.

Hoxall's exrs., v. *Shippen*, 10 Leigh, 536.
Brough v. *Higgins*, 3 Gratt. 408.

If, however, it be assumed or conceded that appellant might under any circumstances, without the consent of appellees, agree that the insurance money should be replaced on the mortgaged premises by the life tenant, and still hold its mortgage for the full amount against the estate of appellees; there is we submit, no authority which will relieve appellant from its liability to see that the money received by it was actually replaced upon the mortgaged premises.

The case of *Gordon* v. *Ware Savings Bank*, 115 Mass. 588, cited by counsel for appellant, is unlike the case at bar in several important particulars, and is in no respect in conflict with the proposition above contended for.

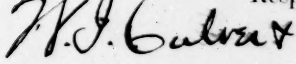
The buildings on the mortgaged premises, in that case, were *damaged*, not as in the case at bar, destroyed by fire,

and the insurance money was collected by the mortgagee and subsequently paid to the mortgagor *to* be applied in *repairing the premises*. At the time of the fire and the collection of the insurance money by the mortgagee, the mortgage was not due as in the case at bar, and the mortgagor did not consent to the application of the money upon the mortgage debt.

The money moreover was applied in the repairing of the damaged buildings and inured to the benefit of the security held by both mortgagees; and the court held that a second mortgagee had no equity to have the amount so received by the first mortgagee, applied in reduction of the debt secured by the first mortgage.

If the principles we have contended for are sound in law, appellant will receive by the decree appealed from even more than it is justly entitled to, and has no equity to question the judgment of the court below.

Respectfully submitted,



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